

GUACANAGARI	PONTIAC	BLACK HAWK
MONTEZUMA	CAPTAIN PIPE	KEOKUK
QUATIMOTZIN	LOGAN	SACAGAWEA
POWHAHAN	CORNPLANTER	RONITO JIMENEZ
POCAHONTAS	JOSEPH BRANT	MANGUS
SAMOSSET	RED JACKET	COLORADAS
MASSASOIT	LITTLE TURTLE	LITTLE CROW
KING PHILIP	TECUMSEH	SITTING BULL
UNCAS	OSCEOLA	CHIEF JOSEPH
TEDVUSKUNG	SEQUOYA	GERONIMO
	SHABONEE	

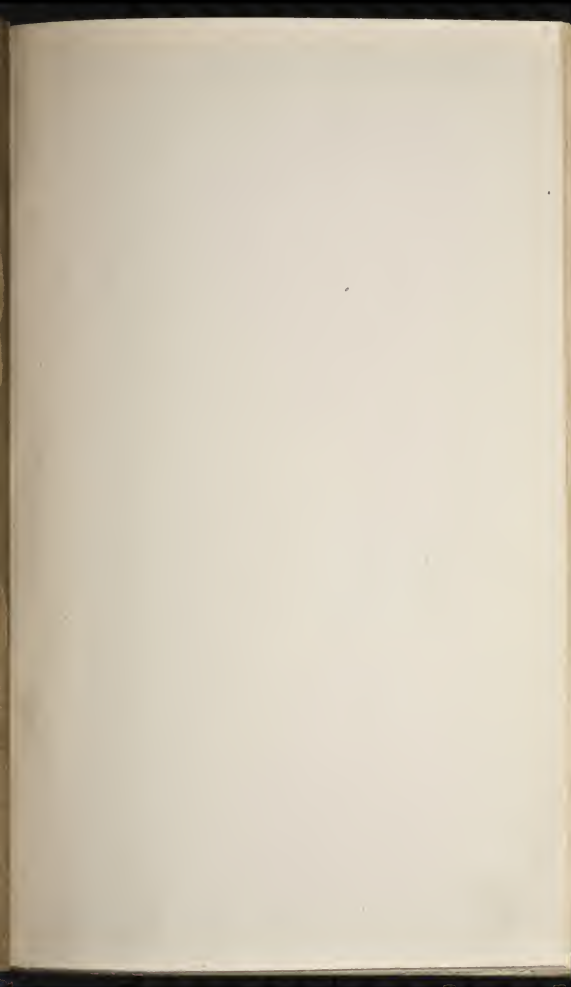


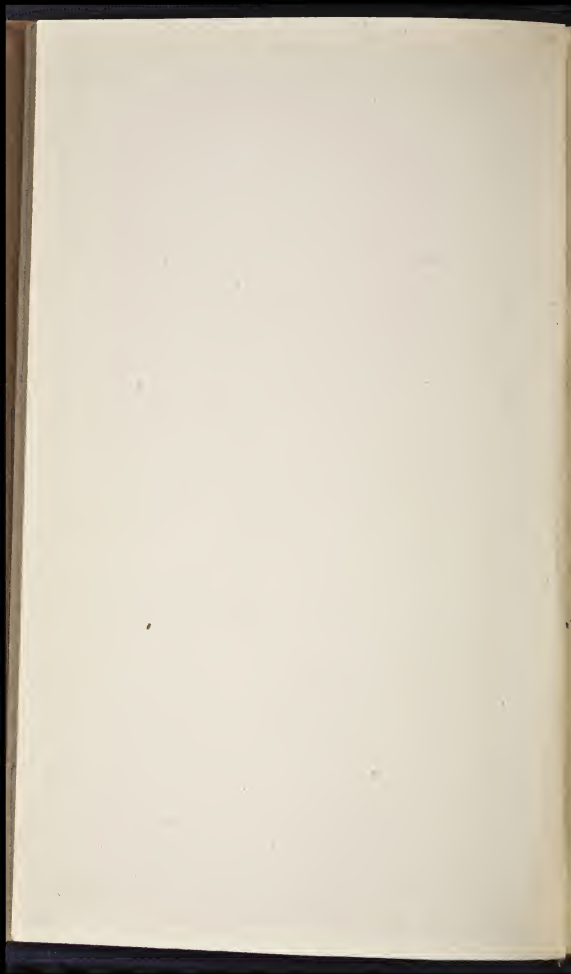
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PIMA INDIAN RESERVATION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

SIXTY-SECOND CONGRESS

SECOND SESSION

ON

H. R. 18244

A BILL PROVIDING FOR THE CONSTRUCTION OF IRRIGATION WORKS
FOR IMPOUNDING THE WATERS OF THE GILA RIVER, ARIZ.,
AND ITS TRIBUTARIES, FOR IRRIGATION OF THE LANDS
OF THE GILA RIVER VALLEY, AND FOR THE PROTEC-
TION OF THE INTERESTS OF THE PIMA AND OTHER
INDIAN TRIBES, AND FOR OTHER PURPOSES

MARCH 14, 1912

Printed for the use of the Committee on Indian Affairs.

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COMMITTEE ON INDIAN AFFAIRS.

UNITED STATES SENATE.

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PIMA INDIAN RESERVATION.

THURSDAY, MARCH 14, 1912.

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
Washington, D. C.

The committee met at 11.30 o'clock a. m.

Present: Senators Clapp (acting chairman), Sutherland, Curtis, Brown, Page, Chamberlain, Owen, Watson, and Myers.

STATEMENT OF HERBERT MARTEN, FINANCIAL CLERK OF PIMA INDIAN AGENCY, ARIZ.

Mr. MARTEN. Mr. Chairman, and gentlemen, the case of the Pima Indians in Arizona is probably familiar to the committee, more or less. The fact is that the Indians have been robbed of their water rights in the water of the Gila River. They are an agricultural tribe, and were an independent tribe, and self-supporting, and since they have been robbed of their water they are now dependent upon the Government, and dependent upon such work as they can get and such meager crops as they now raise from the flood waters, and their condition is now one of penury and semistarvation.

About the year 1900 it was proposed that a reservoir should be built on the Gila River to give them water, and for the irrigation of their land that had been deprived of water, but the site of that reservoir was changed to another river, the Salt River, and it is known now as the Roosevelt Reservoir.

Now, water might have been obtained by the Indians from that reservoir, but in place of getting water the Government was induced to buy electricity, and the result of that is that they have paid the same price for the electricity as the white people are paying for the river water out of the reservoir, and at the same time the Government is now installing a system of wells at a vast expense to secure pumped water for the Indians, and still it is paying the same price for the electricity as the white settlers are paying for the water.

The consequence is that if that system is allowed to go on to completion it will cost the Government \$2,500,000 (as estimated) as an initial cost to install the water. The life of the wells will be only 10 years, as estimated by Government engineers, and there will be a huge payment of \$160,000 a year for electricity if the Indians are given per capita allotments of 10 acres, as recommended by Commissioner Valentine.

Now, the alternative proposition is to provide a reservoir on the Gila River. The Government engineers estimate, or did estimate, the cost of that reservoir at \$1,000,000 and it would irrigate at the very minimum 60,000 acres of land. If this 60,000 acres of land

should be irrigated from a reservoir the cost per year would be but \$1.60 an acre, if it is the same as the other reservoir. That is what the farmers are now paying for water from the Roosevelt Reservoir already constructed. Therefore, the cost of irrigation would be \$96,000 per year. But under the well system the cost would be \$240,000 a year for electricity required to operate the pumps and other expenses, to say nothing of the initial cost of the well system over and above the cost of the reservoir.

Senator SUTHERLAND. Do you mean to say that the wells would cease to flow at the end of 10 years?

Mr. MARTEN. No, sir; but the original equipment would be worn out, as stated by Government engineers and as also stated the depreciation per annum would be 20 per cent of the original cost, while on the other hand, if the San Carlos Reservoir were constructed it could be made as enduring as time. The difference in the cost of the water secured from the reservoir and the water secured by wells on the irrigation of 60,000 acres amounts to a saving of \$144,000 a year in favor of a reservoir system.

Senator SUTHERLAND. Is there ample water supply?

Mr. MARTEN. There is an ample water supply, but in order to raise that by means of electricity it will cost four or five times what it would to get water from the reservoir.

Senator SUTHERLAND. I do not mean the wells. Is there ample supply in the river?

Mr. MARTEN. Yes, sir; so the engineers have estimated, and the very minimum of land that that would irrigate would be 60,000 acres.

There are two estimates—one is \$1,038,000, and the other is \$1,015,000, and they have been passed upon by Government engineers of the highest standing.

Senator PAGE. One word right there. Your case seems to leave no ground for any argument on the other side. Why, then, has the Government passed favorably upon this proposition to build the wells, if it is so perfectly absurd as you make it out to be?

Mr. MARTEN. The point is that the reservoir which is now constructed was constructed at an enormous expense, and by selling electricity they hope to be able to reimburse themselves more or less for that expenditure. The Government has spent or contracted to spend, \$500,000 in buying electricity, and, as I have said, the white farmers have water for the money they pay. Now, there are two points to the question; the first is that water is reserved for idle speculative lands, and the other one is that not only is the water reserved, but \$500,000 is gathered in for that electricity bought in place of water.

Senator CURTIS. You mean that the Government is using the electricity to pump the water out of the wells, instead of getting it from the reservoir?

Mr. MARTEN. That is the point.

Senator CURTIS. What Senator Page wanted to know, as I understood his question, and which I do not think you did, is: Why did the Government put down those wells if it was going to be such an expensive and such a useless proposition?

Mr. MARTEN. They should never have done it.

Senator CURTIS. Why did they do it—that is the point?

Mr. MARTEN. I think all the evidence seems to show that the reason why it was done was that these idle speculative arid lands which were not supplied with water should have the water that ought to have gone to the Indians.

I can give you a case in point. There is a large estate of 18,000 acres of land bordering on the Indian reservation, with nothing to divide the two but an imaginary line run by the surveyors. There is evidence to show that those 18,000 acres of public land have been illegally secured from the Government, and the water which should be running over the Indian lands, and which used to overflow this land from a canal in times of high water is now running on this 18,000 acre tract of speculative land.

Senator PAGE. It has been diverted wrongfully?

Mr. MARTEN. It has been diverted in place of being put on the Indian lands.

Senator CURTIS. It is appropriated by the other lands?

Mr. MARTEN. Yes, sir.

Senator CURTIS. How many wells have been put down by the Government?

Mr. MARTEN. Ten.

Senator CURTIS. How much have they cost?

Mr. MARTEN. The cost of those wells is about \$900,000 at the present time, including contracted indebtedness.

Senator CURTIS. How many of them are working?

Mr. MARTEN. Seven.

Senator CURTIS. Satisfactorily, I mean.

Mr. MARTEN. Well, not all of the seven are working satisfactorily.

Senator CURTIS. Three, is it not?

Mr. MARTEN. There are three or four working satisfactorily; seven are working more or less satisfactorily.

Senator CURTIS. How many acres are being irrigated by those seven wells or from the seven wells?

Mr. MARTEN. There can be about 4,200 acres irrigated.

Senator CURTIS. For which the Government has spent how much money?

Mr. MARTEN. The Government has spent altogether about \$500,000 and has contracted to pay \$400,000 more.

Senator CURTIS. That is \$900,000?

Mr. MARTEN. Yes, sir.

Senator OWEN. Under whose direction was that done?

Mr. MARTEN. I believe it was done chiefly under the direction of the former chief engineer of the Indian service, Mr. William H. Code, in connection with the Reclamation Service. Mr. Code has now resigned from the service.

Senator OWEN. That is rather an expensive service.

Mr. S. M. BROSIUS (agent of the Indian Rights Association). I should like to say that Mr. Code resigned from the service after there had been quite an exposition of the transactions in the irrigation matters last summer.

Mr. MARTEN. Furthermore, those wells are very alkaline in character and will do harm to the vegetation.

Senator CURTIS. How much? Go ahead and tell us what you know; what it has done up to the present time.

Mr. MARTEN. A similar well installed about seven years ago has already disastrously affected a large area of agricultural land at Pima

Agency at Sacaton. Last year seed had to be planted three or four times; grapevines were dying; and it is a matter of record and observation that that land is practically ruined. I know there are many theories as to what the water will do under certain circumstances, but there is recorded evidence.

Senator CURTIS. How deep are those wells?

Mr. MARTEN. The water level is about 60 feet, but the depth of the well is, I think, 200 feet.

Senator CURTIS. You say there is alkali in this water, and that it is injurious to the land?

Mr. MARTEN. Yes, sir.

Senator CURTIS. Your plan would be to use the surface water, which is not alkaline?

Mr. MARTEN. The river water.

Senator CURTIS. Which is not alkaline?

Mr. MARTEN. Which is much less alkaline in character than the wells, and contains vast quantities of valuable fertilizing elements that overcome what alkalinity there is in the water.

Senator SUTHERLAND. If you have an abundant flow, it will wash the alkali out?

Mr. MARTEN. To some extent; some of the alkali would be washed out. With the use of river water entirely, there is no question but that the land would be perpetually fertile.

Senator SUTHERLAND. That is what I wished to suggest, that the river water would absorb some of the alkali.

Mr. MARTEN. Yes, sir.

Senator PAGE. How many Indians are affected by this change of plan?

Mr. MARTEN. There are 4,000 Indians in the tribe and 800 get a dubious benefit from the wells already under construction. Therefore there would be 3,200 which have received no benefit whatever, but the total population would be benefited very greatly by the change from the well system to a reservoir.

Senator PAGE. How many are really deprived of a livelihood because of this condition?

Mr. MARTEN. Three thousand two hundred are more or less deprived of a livelihood, because they are all chiefly engaged in agriculture.

Senator CURTIS. These Indians were self-supporting before the water rights were taken away from them and had never called upon the Government for aid of any kind or character?

Mr. MARTEN. That is correct.

Senator SUTHERLAND. They were engaged in agriculture?

Senator CURTIS. Yes.

Senator PAGE. Now, they are reduced to poverty and want?

Mr. MARTEN. Yes, sir.

Senator SUTHERLAND. I do not quite understand the situation with reference to this reservoir already in existence. Is that a reservoir constructed by the Government?

Mr. MARTEN. Yes, sir; by the Reclamation Service.

Senator SUTHERLAND. Under the reclamation act?

Mr. MARTEN. Yes, sir.

Senator SUTHERLAND. And the water rights carried by the reservoir have been appropriated by white farmers?

Mr. MARTEN. I must make it clear to you that there are two streams very close to each other. They form a confluence below the reservation. The one is the Gila River and the other is the Salt River. Originally it was proposed to put the reservoir on the Gila River, so as to benefit the land; but, for political reasons or otherwise, the plan to construct a reservoir was changed from the originally proposed site, on the Gila River, and the reservoir constructed on the Salt River, which is now known as the Roosevelt Reservoir. A statement was made that water from the Roosevelt Reservoir would be supplied Indian lands on the Gila River Reservation, but it has not been supplied.

Senator SUTHERLAND. What I want to know is whether all the water that is secured by this reservoir has been appropriated by white farmers?

Mr. MARTEN. Yes, sir; the entire flow of the reservoir, I believe, has now been appropriated for land, so that there is no more water for sale.

Senator SUTHERLAND. So that no water could be taken out of that reservoir for the benefit of the Indians?

Mr. MARTEN. No, sir.

Senator SUTHERLAND. The Indians are absolutely dependent upon these wells?

Mr. MARTEN. The Indians are absolutely dependent upon these wells and the flood waters.

Senator SUTHERLAND. How about the 800; do they get water from the wells?

Mr. MARTEN. They get water from the wells; but they will not receive these wells—

Senator SUTHERLAND. But none of the Indians get water from the reservoir?

Mr. MARTEN. No, sir; none of the Indians on the reservation we are speaking of.

Senator SUTHERLAND. Is the soil on which these wells are dug alkaline in character?

Mr. MARTEN. Yes, sir.

Senator SUTHERLAND. So that the natural seepage of the water from the surface through the soil into the wells takes up the alkali from the soil?

Mr. MARTEN. Yes, sir. It is proved by the computations that we have from official sources that there will be 8,000 pounds of salt deposited annually on every acre of land with the water out of the Pima Agency wells which has now ruined the land.

Senator SUTHERLAND. And the water in the river comes from melting snows and rains, and simply flows over the surface of the ground, and naturally does not take up so much of the alkaline substance as the water that seeps into the ground?

Mr. MARTEN. Yes, sir.

Senator SUTHERLAND. The proposition is to construct the reservoir for the benefit of the Indians on the Gila River.

Mr. MARTEN. Yes, sir.

Senator SUTHERLAND. What is the estimated cost of that?

Mr. MARTEN. A little over \$1,000,000.

Senator SUTHERLAND. What do you ask now—what action of Congress?

Mr. MARTEN. There is an item in the Indian appropriation bill which is before the House, which provides \$10,000 for the expense of a board of engineers to make a new survey of the San Carlos Dam site, and absolutely put at rest the question as to whether it is feasible or not to construct a dam there. The item as originally incorporated provided for a board of Army engineers to make the examination, because, although the Government engineers were strongly in favor of this reservoir 10 or 12 years ago, later on a railroad company desired to get through the canyon, and if they had taken their line through the canyon it would have become worthless for reservoir purposes. An adverse report was made by the Reclamation Service, which completely reversed a former report of the Government engineers. They are on record, therefore, as being against the San Carlos Reservoir site and in favor of the railroad company.

Senator PAGE. Does the department positively object to the passage of your resolution or bill?

Mr. MARTEN. No, sir. It does not. The Indian Bureau is very much in favor of it.

Senator PAGE. Who is opposing its passage?

Mr. MARTEN. The Reclamation Service. They are apparently desirous of sending their engineers to investigate in San Carlos in place of the Army engineers. They are already on record as having absolutely condemned the site for reservoir purposes. The Indian Bureau is in favor of it.

Senator SUTHERLAND. The Reclamation Service is opposing it because they want to sell the electricity?

Mr. MARTEN. I presume if the motive of the Reclamation Service were to be inquired into it would be necessary to submit the evidence. It is difficult to get at their exact motive, but they are on record as having opposed the reservoir once. Other Government engineers are on record in favor of it.

Senator PAGE. As I understand it, the engineers of the Reclamation Service are on record as saying that it is actually impracticable to build this dam that you suggest?

Mr. MARTEN. Yes. Therefore the item was incorporated in the Indian bill that the Army engineers should make the investigation. Mr. Burke introduced an amendment to the bill authorizing the Reclamation Service engineers to make the investigation, because there was some criticism made of the first item, the original item, and Mr. Burke was not in possession of the facts at the time, and later, when he got in full possession of the facts, he was perfectly agreeable that the Army engineers should make the investigation; and that motion was passed unanimously by the Indian Committee of the House the other day.

Senator PAGE. Would it not, in your judgment, be better, inasmuch as one board of Government engineers has declared this project of yours to be absolutely impracticable, to have the ideas now covered by the appropriation bill put in effect, and have the matter examined before we pass an appropriation for your proposition?

Mr. MARTEN. Yes; that is the point.

Senator CURTIS. Do I understand you to say, as the Senator suggests, that the Reclamation Service has declared the suggestion of the Indian Office and made by you to be impracticable?

Mr. MARTEN. That is the point; yes, sir.

Senator CURTIS. They do?

Mr. MARTEN. They condemn the reservoir site. I would not say that they say it is altogether impracticable, but the reservoir site is absolutely condemned, according to the report that I have here.

Senator CURTIS. How do you mean "condemned"?

Mr. MARTEN. They say the foundations can not be secured, but, on the other hand, the foundations are declared by eminent engineers to be absolutely safe and the reservoir site one of the best in arid America. This is shown by Water Supply Paper No. 33, of the Geological Survey.

Senator PAGE. In view of that fact, do you not think it would be wise to have another examination made, as provided by the appropriation bill, rather than appropriate now specially \$1,000,000 to build a dam or provide water where it may be worthless?

Senator CURTIS. My idea was simply to hear this witness this morning, so the committee could, when it meets as a full committee, consider and determine what course to pursue.

Senator PAGE. I should like to have him direct his argument toward that feature of the case. Why should we appropriate money now, if it has been decided by a competent board of engineers that it is absolutely impracticable, without making a further investigation?

Mr. MARTEN. The idea was to have the Board of Army Engineers make another investigation, as being an absolutely unbiased board.

Senator SUTHERLAND. All you ask now is an appropriation of \$10,000 to make an investigation?

Mr. MARTEN. Yes, sir.

Senator SUTHERLAND. You do not ask us to authorize the construction of this dam or to appropriate any money toward it?

Mr. MARTEN. No, sir; The point is that the examination be made by a board of Army engineers in place of the Reclamation Service engineers.

Senator PAGE. I now get your idea, but I did not get it until this moment.

Mr. MARTEN. It is a very complicated matter.

Senator CURTIS. Is that all you want?

Mr. MARTEN. Yes, sir.

Senator CURTIS. Now, Mr. Marten, I would suggest that if you have any printed data or written statements that you would like to submit to the committee that you file them with the secretary, so that we may have them.

Mr. MARTEN. I have considerable data.

Senator CURTIS. Will you file what you have with the secretary?

Mr. MARTEN. I haven't it with me now, but I will furnish it to the secretary.

Senator CURTIS. If it is printed, all you need to do is to refer to it as document so and so.

Mr. MARTEN. It is printed, but the matter is very much involved. There is a matter, for instance, on the other reservation. About \$170,000 of Government money has been applied on lands which already have an adjudicated water right, and the Government is about to expend that money. It is a matter which calls for thorough investigation, according to the evidence.

The CHAIRMAN. How would this affect other irrigation projects? Take the Florence Casa Grande Water Users' Association.

Mr. MARTEN. If 40,000 acres of land were irrigated from the San Carlos Reservoir for the Pima Reservation there would still be some surplus water which might be sold to the Florence Casa Grande Water Users' Association, and in that way their lands could be irrigated, and at the same time the Government could partially reimburse itself.

The CHAIRMAN. Would there be enough water to irrigate their lands?

Mr. MARTEN. There would be more than enough water to irrigate their lands.

The CHAIRMAN. That is what I wanted to get at.

There being no further questions, Mr. Marten was thereupon excused.

The CHAIRMAN. Mr. Brosius, do you want to be heard?

Mr. BROSIUS. I just want to say one word. Mr. Marten has been here some two or three months and has collected a vast amount of evidence regarding this matter, which can be filed.

The CHAIRMAN. It will be filed.

The printed matter referred to is as follows:

A few facts showing conditions in relation to the system of irrigation by well water at Pima Agency, Ariz., which the witnesses for the Reclamation Service failed to state to the subcommittee of the Committee on Indian Affairs of the House of Representatives, in considering the Indian appropriation bill, January 17, 1912, as shown in the printed hearings:

(1) That \$400,000 is still due to the Salt River Valley Water Users Association under their contract with the Government for the purchase of electricity to operate the wells on the Pima Reservation; that this is additional to the sum of approximately \$500,000 already expended on the present unit of 10 wells, only 7 of which are complete. (See Hearings No. 1, before Committee on Indian Affairs of House of Representatives on H. Res. 330, Dec. 21, 1911, pp. 4, 5.)

(2) That the present unit of 10 wells will thus cost between eight and nine hundred thousand dollars, and this does not include cost of diversion dam. (For cost of Salt River diversion dam, see Hearings No. 2, supra, p. 47.)

(3) That the annual charge to the Indians for pumped water of \$4 per acre, which Mr. Newell testified they would have to pay, is considered by white farmers as an exorbitant and practically prohibitive charge under present agricultural conditions in Arizona. (See Phoenix, Ariz., leading daily papers, lately published.)

(4) That the white farmers under the Roosevelt Reservoir paid only \$1.60 per acre as actual cost of reservoir water last year (1911), which is characterized as a high charge in view of the fact that farmers not under the reservoir system, who are organized into private cooperative companies take water from the Salt River at Tempe and Mesa in the Salt River Valley at a maximum annual cost of 60 cents per acre. (See Hearings No. 1, supra, p. 14.)

(5) That the San Carlos Reservoir would irrigate a minimum of 60,000 acres, according to reports of Government engineers. (See H. Doc. No. 521, 62d Cong., 2d sess., pp. 71, 78, 62.)

(6) That if these 60,000 acres should have to be irrigated with pumped water at \$4 per acre instead of reservoir water the cost is seen to be \$240,000 a year.

(7) That if, on the other hand, this minimum of 60,000 acres should be supplied with San Carlos Reservoir water as proposed at \$1.60 per acre, the same as farmers under the Roosevelt Reservoir are paying, the annual cost would be but \$96,000.

(8) That the difference in favor of a reservoir on the irrigation of 60,000 acres of land is thus \$144,000 a year.

(9) That in 20 years this difference would amount to \$2,880,000, or enough money saved to construct a reservoir at San Carlos, according to Mr. Newell's own testimony. (Cost of Roosevelt Dam was approximately \$3,500,000. See House hearings, Indian appropriation bill, 1912, p. 108.)

(10) That other engineers in the employ of the Government have estimated the cost of a dam at San Carlos at little over \$1,000,000 (Doc. No. 521, supra, pp. 60, 77.) and that the farmers under the Roosevelt Reservoir, organized into a protective association, have recently brought charges against the Reclamation Service, demanding an investigation by Congress of affairs of the Reclamation Service pertaining to

the Roosevelt project, and stating that the work done by the Reclamation Service on said project has been "negligently" "wastefully," and "extravagantly" done. (See Petition, published in Phoenix (Ariz.) Gazette, Feb. 19, 1912.)

(11) That a railroad runs to within 5.75 miles of the San Carlos Dam site, whereas the machinery and much other material used in constructing the Roosevelt Reservoir had to be freighted over some 60 miles of mountain road, in wagons, thus necessitating a round trip of 120 miles, and that this road was constructed at great expense only part of which was met by private subscriptions, before any important work could be done.

(12) That 5,000 horsepower of electricity would be generated by the waters of the San Carlos Reservoir, according to reports of Government engineers, and that this power would be readily salable at \$100 per horsepower annually in the extensive mining district in the immediate neighborhood of the proposed reservoir. That the income derived from the sale of this power would amount to \$500,000 annually, and that this might be allowed to accumulate for many years before the power or the income derived from it would be needed for cleaning out the reservoir. (See Doc. No. 521, supra, pp. 61, 72.)

(13) That Government engineers estimate the life of the wells now being installed on the Pima Reservation at a vast expense as only 10 years and consider them in the nature of "temporary improvements," "which should certainly be abandoned if storage water becomes available." (See reports of Government engineers, Doc. No. 521, supra, pp. 54, 55.)

(14) That the alkaline content of the wells at Pima Agency has been continually increasing since the wells were first installed, some seven years ago. According to official analyses, the increase up to last July (1911) was nearly 50 per cent and has now reached one-tenth of 1 per cent, which is considered the danger point for vegetation. (See Hearings No. 1, supra, on H. Res. 330, pp. 10, 11.)

(15) That 5½ acre-feet of water such as the above (which amount has been supplied to the lands under the Roosevelt Reservoir) would deposit annually on every acre of ground, if all remained, 15,000 pounds of salts, thus impregnating the soil with 7½ tons of deleterious and poisonous salines to the acre. (See Hearings No. 1, supra, on H. Res. 330, p. 11.) That barley, which is not very sensitive to alkali, refuses to grow in a soil containing little more than twice the above amount (32,480 pounds) of soluble salts per acre in the surface 4 feet. (See Hearings No. 1, supra, p. 12.)

(16) That a large area of land forming part of the Pima Agency farm and garden has been ruined for agricultural purposes by the well water. (See hearings, supra, p. 10.)

(17) That one of the wells forming the unit of 10, referred to by Mr. Hill in his testimony, from which it is intended to supply the Pima lands with water for their irrigation, contains as high as 147 parts of alkali per 100,000, or nearly 50 per cent more than the wells which have wrought ruin at Pima school farm. (See hearings No. 1, supra, p. 23.)

(18) That it is possible this alkali content may increase indefinitely. (See Doc. No. 521, supra, p. 57.)

(19) That the garden at Pima school has already been moved once as a result of the ruin of the land for agricultural purposes through the use of well water for irrigation, and will have to be moved again, shortly, under present conditions, to new ground, as garden seeds when planted refuse to germinate notwithstanding the best scientific cultural methods are employed by skilled agriculturists. (See hearings No. 1, supra, p. 10.)

(20) That peach trees have died and grapevines are now dying rapidly at the Pima Agency as a result of using the well water.

(21) That alkali is spreading in patches over certain areas of this farm watered from wells.

(22) That the farmer recently employed at Pima Agency farm for many years states in an official reply to certain charges made against him by Inspector E. B. Linnen, of the Interior Department, that the well water is ruining the farm. That this knowledge is a matter of record and observation and is known to all employees now engaged in the superintendency of the farm.

(23) That not only the "subchiefs" of the Pima Tribe are protesting against the wells, as Mr. Newell states in his testimony before the subcommittee, but the head chief and nearly all the returned students and educated men of the tribe, and that these protests have been made ever since the inception of the well system. (See Doc. No. 521, supra, pp. 3, 6, 8; and Hearings No. 1, supra, p. 24.)

(24) That the Indians were never consulted about the wells, notwithstanding their earnest appeals to be heard, except by Mr. Carl Gunderson, formerly supervisor of allotting agents, in 1911, after the wells were practically completed. (Doc. No. 521, supra, p. 6.)

(25) That no diversion dam has been constructed across the Gila River and that in consequence, the flood waters can not be successfully diverted into the flood-water canal for distribution on to the Indian lands.

(26) That a mud pump has been installed to keep the mouth of the canal open, so as to utilize the flood waters from the river, and that the said pump fails to do satisfactory work.

(27) That the Indians have been obliged to abandon this new canal heading and take water from their old canal.

(28) That during the greater part of the year 1911 ineffective brush dams were built by the Indians under the direction of a Government employee in front of the new canal heading with a view to diverting the flood waters of the river, and that these dams were swept away in each instance.

(29) That the 10 wells installed can not possibly irrigate 10,000 acres of land in actual practice. (See Hearings No. 1, on H. Res. 330, *supra*, p. 4.)

(30) That such estimate is based on the assumption that the lands of the Indians shall receive but little more than half as much water as the lands of the white farmers under the Roosevelt Reservoir have been receiving.

(31) That the Commissioner of Indian Affairs recommends allotments to the Pima Indians of 10 acres per capita, in view of the area of alluvial lands heretofore cultivated by the Indians within the Gila River Reservation, approximating 30,000 acres. That under the well system they were to have been given allotments of 10 acres to a family. (See Hearings No. 1, *supra*, H. Res. 330, pp. 16, 17.)

(32) That Mr. Louis C. Hill, in his testimony given before the Committee on Expenditures in the Interior Department of the House of Representatives on House resolution 103, July 7, 1911, page 628, stated that the cost of electricity to the Indians would be three-tenths of a cent per kilowatt hour, and that in his testimony given before a subcommittee of the Committee on Indian Affairs of the House of Representatives on the Indian appropriation bill for 1912, page 109, Mr. Hill states that the cost to the Indians per kilowatt hour will be seven-tenths of a cent—the latter figure being an increase in cost over the former of 125 per cent.

(33) That former chief engineer for the Indian Service, William H. Code, stated in his testimony given before the Committee on Expenditures in the Interior Department of the House of Representatives, July 8, 1911, on House resolution 103, page 650, that the annual cost of electricity for the Indian lands would be about \$1 per acre. Mr. Hill, in his testimony referred to (hearings on Indian bill, *supra*, p. 109), shows that it will be a fluctuating charge depending on the amount of water delivered from the wells. The lands of white farmers under the Roosevelt Reservoir have received more than 5 acre-feet of water for their cultivation. (See Climatological Report of Weather Bureau, District No. 9, November, 1910.) Reckoning on the same basis, the annual cost of electricity for the Indian lands would be (according to Mr. Hill's own testimony, p. 109) in excess of \$2.50 per acre, again an increase on the estimate made last year (1911) by Chief Engineer Code of more than 150 per cent.

Mr. Hill further states (p. 109) that this charge is "nearly constant." In other words, it is not quite constant, and the obvious inference is that there may be a still further increase in cost.

(34) That the above are only a few reasons among many others why the well system should be abandoned and stored water obtained for the irrigation of the Indian lands within the Pima Reservation.

SALT RIVER (PIMA) LANDS UNJUSTLY TAXED.

Three thousand four hundred and forty-eight acres of Indian cultivated lands within the Salt River Reservation, Ariz., which have a perfect title to river water have been unjustly taxed, and it is now sought to bind the Government to the payment of more than \$170,000 on the basis of its proportionate charge for the construction of the Salt River (Roosevelt) irrigation project, equally with other lands not having adjudicated water rights. This computation is based on the cost per acre of \$50 to lands under the Roosevelt project; it is believed, however, that the cost per acre will eventually be not less than \$55 or \$60 per acre. (See Hearings No. 2, H. Res. 330, 62d. Cong., 2d sess., pp. 45, 49.)

It appears that the Government has been led into practically mortgaging these Indian lands by some of its own officials to the promoters of the Roosevelt Reservoir project, notwithstanding the fact that the said lands have an adjudicated title to water for their irrigation in the normal, or low-water-mark flow, of the Salt River. (See Hearings, *supra*, pp. 41 and 46.)

WASHINGTON, D. C., February 21, 1912.

Hon. JNO. H. STEPHENS,

Chairman Committee Indian Affairs, House of Representatives.

DEAR SIR: In regard to the matter of a system of irrigation for the lands of the Pima Indians which is now being considered by your committee, the following statements are submitted as showing that the construction of a reservoir at San Carlos would reduce the expenditure necessary to the completion of the well and pump system by more than a million dollars:

Balance of the amount of contracted indebtedness for which the Salt River Valley Water Users' Association seeks to bind the Government under the agreement to supply 1,000 horsepower of electricity (approximately) (see Hearings No. 1, H. Res. 330, 62d Cong., 2d sess., pp. 1 to 5).....	\$400,000
Estimated cost of masonry diversion dam across channel of Gila River, if no reservoir is constructed to impound floods, such dam to be similar to the one constructed by the United States Reclamation Service across Salt River under the Roosevelt Reservoir at a cost of \$500,000 (see Hearings No. 2, supra, p. 47).....	400,000
Ten additional wells necessary to consume the 1,000 horsepower of electricity already contracted for at a cost of \$10,300 per well, as estimated by the Reclamation Service.....	103,000
Cost of flood-water system on south side of river similar to the one on north side, partially completed, according to United States Reclamation Service estimates (see Hearings, supra, No. 1, p. 5; No. 2, p. 31).....	124,000
The above system would irrigate only 12,000 acres of Indian lands, allowing 600 acres to a well. This estimate is based on the amount of water flowing from the wells, averaging 200 miners' inches per well, and the amount of water allowed by court decree under the Roosevelt system, of 48 miners' inches to the quarter section of land. (See Decree, Justice Kent, "Hurley v. Abbott," Arizona, March 1, 1910, p. 11.) The area of Indian lands already put under cultivation by the Indians is shown by investigation to average about 8 acres per capita.	
If 10-acre allotments should be made, as recommended by the Commissioner of Indian Affairs, in justice to the Indians, it would require under the well system by the foregoing computation at least 60 wells, making necessary the installation of 40 wells over and above the 20 necessary to consume the 1,000 horsepower of electricity already contracted for; therefore 40 wells at a cost of \$10,300 per well (United States Reclamation Service estimate).....	412,000
The thousand horsepower of electricity already contracted for is sufficient to operate 20 pumps, at the rate allowed of 50 horsepower to the well. The Government has entered into contractual obligations with the Salt River Valley Water Users' Association to pay \$500,000 for the said 1,000 horsepower, exclusive of maintenance charges. At that rate the cost of 2,000 horsepower additional, sufficient to operate 40 more pumps, would be (see Hearings No. 1, supra, pp. 4, 5, 18).....	1,000,000
Total estimated cost of well and pump system to irrigate 40,000 acres of Indian lands, sufficient to make per capita allotments of 10 acres of irrigated land to the Pima Indians.....	2,439,000

That the above computation is a conservative estimate is apparent by a reference to the United States Reclamation Service annual estimate of funds for 1912 for irrigation of Pima lands, from which the following excerpt is made:

"The construction cost per acre will be over \$50, due to the high cost of installing a combined system of the type under consideration. The great need of the Indians for an additional water supply induced the Indian Office to favor this expensive plan of reclamation."

The above official estimate shows that the total initial cost of 40,000 acres supplied with water by the well and pump system at more than \$50 per acre would be in excess of \$2,000,000. (It is believed from later estimates made that the ultimate cost will not be less than \$60 per acre, or approximately \$2,400,000 for the entire area of 40,000 acres.)

There will also be a very large annual expense for purchase of electricity and other charges, which will amount to about \$4 per acre, according to testimony given by Mr. Newell, Director of the Reclamation Service, before a subcommittee of the Committee on Indian Affairs of the House of Representatives January 17, 1912. (See hearings on Indian appropriation bill, p. 99.) From the above it will be seen that the annual cost of pumped water for 40,000 acres of land will be \$160,000.

A further large cost would accrue for the maintenance of the plant. Government engineers estimate the life of a pumping plant at only 10 years. (See H. Doc. No. 521, 62d Cong., 2d sess., pp. 54, 55.) In entire agreement with said engineers' estimates, the University of Arizona in Bulletin No. 49, Cost of Pumping for Irrigation (pp. 459-460), says:

"The life of the average pumping plant in use every year will probably not much exceed 10 years. This would indicate that at least 20 per cent of the first cost of the plant should be included each year as a part of the expense of running the plant, in order to cover these items of interest and depreciation."

Cost of proposed San Carlos Reservoir.

Cost of a reservoir at San Carlos of sufficient capacity to irrigate 60,000 acres of land, together with auxiliary works for the same, as specified by Government engineers (see H. Doc. No. 521, 62d Cong., 2d sess., pp. 60 and 77).....	\$1,038,926
The above figure is stated to be a "very liberal one." (See document, supra, p. 60.) (Lately cement works have been established within 100 miles of the proposed dam, which should be able to furnish the cement estimated on at \$8 per barrel, as having to be brought from the seaboard, at a greatly reduced cost.) (See Water-Supply Paper No. 33, U. S. Geol. Survey, p. 87.)	
A reservoir as heretofore estimated would supply the Pima Indians with 10-acre allotments of irrigated lands, and would supply additional water for some 17,000 acres of arid land, which would be worth not less than \$100 per acre, from the sale of which the Government might secure a revenue of.....	1,700,000
(The above estimate allows for 3,000 acres of irrigated lands belonging to white landowners to be supplied with water, as having possible water rights already vested in the normal flow of the Gila River after the Indian lands have been supplied.)	
Therefore:	Acres.
Indian lands to be supplied.....	40,000
Lands to which possible water rights already appertain.....	3,000
Arid lands to be irrigated.....	17,000
Total.....	60,000

PHOENIX, ARIZ., December 7, 1905.

MR. F. H. NEWELL,
Chief Engineer United States Reclamation Service,
Washington, D. C.

DEAR SIR: In compliance with your instructions, a board of engineers designated to consider the San Carlos project have carefully considered all of the available data bearing upon the matter and have to report as follows:

A reservoir of sufficient capacity at San Carlos to store 300,000 acre-feet of water will require a dam 140 feet high, and in view of the large amount of sediment carried by the flood waters of the Gila River, the dam would have to be 180 feet high to maintain such a capacity for a period of 60 years, as the silt deposited in the reservoir would amount to about 7,500 acre-feet annually. (For contrary opinion, see H. Doc. No. 521, 62d Cong., 2d sess., pp. 60, 61, 71, 72, 77.)

The topography of the country is of such a nature that it will not be financially feasible to construct canals around the reservoir for flushing purposes. (For contrary opinion see document supra, pp. 71, 72, 61.)

Borings in the bed of the San Carlos River at the dam site indicate that the bed rock on which the dam will have to be founded is about 60 feet below the low-water level of the stream, making the structure very expensive for the length of time that it can be expected to serve a useful purpose. (For contrary opinion see document, supra, pp. 59, 60, 64, 73, 74, 79.)

The dip of the bed rock at the site of San Carlos Dam is in the direction of flow and may be a dangerous foundation on which to found the structure. (For contrary opinion see document supra, pp. 59, 60, 64, 73, 74, 79.)

During the years 1904-5 observations and investigations made upon the upper tributaries of the Gila and San Francisco Rivers in New Mexico indicate that reservoirs can be constructed on these streams of sufficient capacity in connection with the

natural flow of the Gila River to irrigate 40,000 acres at a less cost per acre than by constructing the San Carlos Dam. (For contrary opinion see document supra, p. 65.)

The San Carlos Reservoir site is already occupied by the Gila Valley, Globe & Northern Railway, and the Southern Pacific Railway Co. has located a line through the canyon for its main transcontinental line. Estimates for the cost of this line for an elevation of about 40 feet and 150 feet above the river bed show a difference of about \$2,773,000 in favor of the lower elevation. (For contrary opinion see letter from Assistant Secretary of Interior, No. D-17616, San Carlos Reservoir site, application for right of way, Arizona Eastern Railroad Co. et al., February 17, 1912.)

The officials of the Southern Pacific Railway Co. state that if the Reclamation Service will abandon the San Carlos Dam site the railway company will withdraw application for right of way through reservoir site on San Francisco River and will gladly make any concessions that they consistently can in other localities.

In view of the above-mentioned facts and conditions, we recommend that the dams and reservoir site at San Carlos be abandoned. (For contrary opinion see document supra, p. 64.)

We also recommend that the observations for stream discharge be continued on the upper Gila and San Francisco Rivers. (For contrary opinion see document supra, p. 65.)

A plate showing the area, capacity, and useful life of the reservoir for different heights of dam is transmitted herewith.

The resolution of the directors of the Southern Pacific Railway Co. withdrawing application for right of way through the San Francisco Reservoir site will be transmitted as soon as received.

Respectfully submitted.

A. P. DAVIS,
GEO. Y. WISNER,
W. H. SANDERS,
LOUIS C. HILL,
A. E. CHANDLER,
Board of Engineers.

As shown below, the Reclamation Service are on record as opposing the San Carlos Dam site, while very eminent Government engineers have shown the project entirely feasible.

In the files of the Indian Bureau (marked "Laud—Contracts, 36109, 1909, R. J. H.") it is stated that on December 29, 1909, in a letter addressed to Gibson Taylor, Tucson, Ariz., Louis C. Hill, supervising engineer of the Reclamation Service located at Phoenix, Ariz., who was one of the board of engineers which made a report on the San Carlos Reservoir site under date of December 7, 1905, gave five reasons why the Government abandoned the San Carlos site. These reasons are given below, together with the opinion of eminent engineers holding different views, and who have reported favorably upon the feasibility of the project.

- (1) The depth of bed rock is too great. (For contrary opinion, see H. Doc. No. 521, 62d Cong., 2d sess., p. 64.)
- (2) The character of the dam site is bad, as a fault occurs at this point. (For contrary opinion, see H. Doc., supra, pp. 59, 60, 64, 73, 74, 79.)
- (3) The dip of the strata is in the wrong direction. (For contrary opinion, see H. Doc., supra, pp. 59, 60, 64, 73, 74, 79.)
- (4) The amount of silt carried by the Gila River is so great that a reservoir built to a feasible height would be filled up within a comparatively short time. (For contrary opinion, see H. Doc., supra, pp. 60, 61, 71, 72, 77.)
- (5) The cost per acre for a project based on this reservoir would be too great to make the project feasible. (For contrary opinion, see H. Doc., supra, p. 77.)

The CHAIRMAN. In that connection I desire to have printed the petition of Senator La Follette, with the statement of a number of names.

The paper referred to is as follows:

SACATON, ARIZ., November 21, 1911.

We the undersigned, Indians of the Pima Tribe of the Gila River, do hereby petition the Senate of the United States for aid because of the following:

- (1) We have been robbed and plundered for years.
- (2) That Inspector E. B. Linnen, of the Interior Department, investigated the scandals at our agency and he found sufficient evidence against Supt. J. B. Alexander and some of his favorite employees to justify criminal proceedings against them.

(3) We have heard that the officials at Washington are threatening to put aside this report of Mr. Linnen's, and in fact this is already being done. We can not see why this is done. We further understand that this report of Mr. Linnen's was submitted to some clerk in the Department of Justice, who has decided that these thieves did not have a fair show at the investigation. We do not know what he means by a "fair show." What evidence Mr. Linnen obtained was all of a documentary nature, which was supported by nearly 150 affidavits of reputable white people and Indians and was substantiated by facts and figures.

(4) If this report is turned down the plunderers will likely return among us to continue their plans of looting as they did in years past, and we Pimas who have always been the white man's friend would be pauperized by the end of another year.

(5) We earnestly appeal to the Senate of the United States as we also appeal to the lower House to save us from the further depredations of the rogues Mr. Linnen caught and to prevent any of that ring being returned to our reservation. We also appeal to you to restore to us our river water which the whites stole from us through the negligence and indifference of Government officials who were mainly these same rogues and their friends, and we further appeal to you to secure us in the possession of our lands.

(The above petition contained 444 signatures.)

The CHAIRMAN. I present additional petitions which I desire to have printed in the record.

SACATON, ARIZ., January 18, 1912.

HON. GEORGE SUTHERLAND, Washington, D. C.

DEAR GEORGE SUTHERLAND: We desire very much that all the facts regarding conditions on this the Pima Reservation be made public. "Let the truth be known."

And we know of no better way than to place in the hands of the Indian Committees the Linnen report.

Please aid us in having the Linnen report placed before the various Indian Committees and Congress for consideration. All we ask is that Congress know all the facts.

Yours, respectfully,

MABIL ANTON.

PIMA INDIAN RESERVATION,
Sacaton, Ariz., December 16, 1911.

We, the Pima Indians of the Gila River Reservation, Ariz., direct this appeal for the recovery and protection of our rights to members of the Committee on Indian Affairs of the Senate and House of Representatives.

We have been robbed of our irrigating water in the Gila River by unscrupulous whites, who have been allowed to work without hindrance through the neglect or connivance of Government officials to whom our interests have been intrusted.

We have the prior water rights and therefore must have the water. The whites have not the prior water rights, but they have stolen the water and are using it for their own benefit while we are in a condition nearing starvation. For a large part of the year no water at all reaches our farms, and they are turned into deserts. The lands we used to irrigate all the year now get no water except from infrequent floods.

Now that the Government has allowed this condition to prevail, notwithstanding our persistent entreaties, it is proposed to compel us to accept in exchange for the water of which we have been plundered, and which we still lay claim to, an expensive system comprised of wells and pumps designed to furnish underground water for irrigation. We still object to the use of underground water for irrigation, as we have done for years past. We were never consulted about this project, and it was foisted onto us without our consent and in spite of vehement protests from us to the Government.

We protest, because:

(1) Commissioner Valentine in his recent investigation of Pima matters secured official analyses of the well water now being provided for the irrigation of our lands. A reference to the official analyses, which are on file at the Indian office, will show that the well is highly deleterious to the land, and will eventually ruin it for agricultural purposes. We don't want to use water that in a few years will ruin our good alluvial land.

(2) The appropriation of \$540,000, made by Congress to provide this system, is made reimbursable by us, although we had no voice in the matter and do not want to pay for it.

(3) A huge annual cost for electricity, etc., to operate the pumps, as well as the initial cost of installation under the wells and pumps system, will have to be met by us, which is an injustice and will bankrupt every Indian farmer under the system.

(4) The system as at present installed provides water for very few people only out of the 4,000 Indians on our reservation.

(5) The water rights in the Gila River appear by consensus of legal opinion to be still ours, and such water would cost us nothing. Our water is being used for the white man's benefit.

(6) The recent decision of Judge Kent of the United States Supreme Court of Arizona reads in part: "The first in time to appropriate is the first in right to appropriate." Our forefathers were agriculturalists and irrigators with the waters of the Gila River centuries before any white man came.

(7) A large appropriation would still have to be made to complete the present well and pump system of irrigation if it should be allowed to go on to completion. If any further appropriation be made by Congress with a view to our benefit by providing a system of irrigation for our reservation, we would call to the attention of your committee the advisability of establishing our gravity water rights legally.

Our petitions in the past have been chiefly ignored and pigeon-holed in the Indian Department.

We beg your committee will support the recommendation of Commissioner Valentine in our favor. It is plain that some one has plundered.

We earnestly request a thorough investigation by Congress of the present conditions on our reservation.

Very respectfully, yours,

KISTO J. MORAGO,
LEWIS D. NELSON,
HARVEY CAWKER,
JACKSON THOMAS.

Business Committee of Pima Tribe of Indians.

CHICAGO, May 29, 1911.

Hon. WILLIAM J. STONE,
United States Senate.

DEAR SIR: At the suggestion of Dr. Carlos Montezuma we hand you herewith copy of letter, with inclosures, which the writer sent Secretary Fisher May 27 last.

A careful perusal of it will, to my mind, show a most disgraceful attitude by the Government's agents toward its ward, the Indian.

I can not imagine that Secretary Fisher can afford to ignore this complaint as his Indian Commissioner did.

The Indian Department must be in pretty rotten condition when its commissioner can afford to ignore this positive proof of deception as our letter to him discloses under date of April 1, 1911, attached hereto as Exhibit D.

Yet he did entirely ignore it as his reply dated April 22, 1911, attached hereto as Exhibit E, discloses; hence seems to indorse methods that no ordinary business man can ever use and have the respect of his neighbors.

If our Government, acting as a wise, honest, and efficient guardian of the helpless Indian, pursues, through its agents, such tactics, it is to say the least a lamentable outlook for the future unfortunate red man.

Respectfully,

JOSEPH W. LATIMER.

CHICAGO, May 27, 1911.

Hon. WALTER L. FISHER,
Secretary of Interior, Washington, D. C.

DEAR SIR: Supplementing the writer's conversation of last Tuesday, May 23, in Washington, D. C., with your Mr. Brown, would state that I am attorney for Dr. Carlos Montezuma, of Chicago, who is acting under full written power of attorney on behalf of some 150 Mohave-Apache Indians comprising the tribe located on Camp McDowell Reservation, Ariz.

Dr. Montezuma is a full-blood Apache Indian, a man of education, being a practicing physician here in excellent standing, and well known throughout the United States for his interest in Indian history and affairs.

Since May, 1910, there has been various correspondence on the above subject, mostly written by this office, but at the direction and under the name of Dr. Montezuma.

For your information we attach in the order named copies of the following letters, viz, Exhibit A, from former Secretary Ballinger, January 27, 1911; Exhibit B, to Secretary Ballinger, January 30, 1911; Exhibit C, from C. F. Hauke, Acting Commissioner Indian Affairs, March 11, 1911; Exhibit D, to Commissioner Indian Affairs, April 1, 1911; Exhibit E, reply Acting Indian Commissioner, April 22, 1911.

Upon a full investigation it develops that a systematically unfair and unjust effort has been progressing for nearly two years to have these Indians moved from Camp McDowell Reservation to Salt River, against their constant, repeated, and notorious protest; their welfare has been grossly neglected and open fraud adopted to place them in a position of apparently consenting to this proposed removal, their consent, as you know, being necessary to warrant your department moving them.

A repulsive situation is certainly presented when the Indian Department blandly permits one of its chief inspectors (E. B. Linnen) to meet these Indians with representations to gain their consent which are admittedly false. See details in letters attached hereto, Exhibit C and Exhibit D.

Without compensation and at some personal expense the writer has examined into this subject, and when so flagrant a case of imposition and deceit is established as the two letters just named disclose (see particularly Exhibit D) it seems justifiable for one to believe the repeated stories of neglect and dishonesty which have come to our notice regarding the handling by the Indian Department of the affairs of the different tribes in Arizona.

Your Indian Commissioner is charged with the just care of these wards of the Government and their rights. His agents certainly could not have stooped to a more contemptible act than trying to gain the consent of these Mohave-Apaches to removal, by deliberately, through Inspector Linnen, promising them to allot their land at Camp McDowell if they would but select land on Salt River; said promise being absolutely false. As you can readily see, the moment they selected sites at Salt River the necessary consent for your commissioner to move them would have operated, and thereafter it would have been impossible to secure any redress for rights in Camp McDowell.

My training as a business lawyer convinces me that your commissioner, with the above and inclosed facts in his hands and charged with the trust of a fair, honest, and efficient care of these Indians, can hardly appreciate such trust when he replies to the letter of April 1, 1911 (Exhibit D), setting forth this disgraceful Linnen affair, that his office finds nothing in our letter to alter their opinion as before expressed. (See Exhibit E.)

We would respectfully submit that the complacency with which the Indian Department received our disclosure of evidence of its officer's "double-dealing" is amazing; therefore we are forced to bring this to your personal attention. We know that it is not your policy to conduct business on such a basis, nor that you will permit this illegal and wrongful neglect and annoyance of this tribe to exist.

We are seeking (1) stoppage of this pernicious activity of the last year and a half to move these Indians; (2) at least as good treatment and attention as they received from the department agents for the four years prior to 1909; (3) fulfillment of the Government's duty to assist them in their schools and agricultural pursuits on this reservation; (4) at logical time, an allotment of Camp McDowell land to these Indians, permitting them to attain their desire of independence.

We sincerely believe that an early and consistent effort to attain the foregoing objects will soon find these Indians no longer dependents and charges upon the Government, but they will become good citizens in accordance with the established policy of the Government in its present dealings with the Indian question, as we understand it.

Respectfully,

JOSEPH W. LATIMER.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
Washington, January 27, 1911.

Dr. CARLOS MONTEZUMA,
Colorado Building, Washington, D. C.
(Care F. S. Bright, Attorney at Law.)

SIR: The receipt is acknowledged of your communication, dated November 8, 1910, protesting against the proposed removal of the Camp McDowell Indians to the Salt River Reservation, Ariz., and requesting instead that they be allotted at Camp McDowell and that a new modern dam be built for them there.

In response you are advised that it has never been the intention of the Government to force the Camp McDowell Indians to remove to the Salt River Reservation against their wishes, though the department is satisfied, after careful investigation, that it would be to their best interests to so remove. As such removal would involve the expenditure of about \$45,000 for water rights for these Indians, it may readily be seen that the Government would save money if the Indians stay where they are, and

in fact is only considering their best interests in suggesting that they remove to Salt River.

Something over \$9,000,000 has been expended on the Salt River project, and it is extremely improbable that any further expenditures in that vicinity will be considered on any new project which would benefit but a small number of Indians, such as the dam which you proposed be constructed.

The department wishes also to point out to you that it is very unlikely that the Government will consent to the expenditure of any further funds for repairs to the present dam and ditches in use by the Camp McDowell Indians.

In conclusion, you are advised that if the Camp McDowell Indians accept the opportunity offered them to participate in the benefits to be derived from the Roosevelt Dam waters, it is not the intention of the department that they will be deprived of the use of the Camp McDowell lands for pasturage and timber, nor will the Salt River Indians be entitled to any share in such lands.

As the matter now stands, the Indians who do not wish to remove to Salt River will not be compelled to do so by the Government, but the department reiterates its belief that those who do not accept allotments of the irrigable lands at Salt River are standing in their own light, and it is hoped that they will soon see where their best interests lie.

Respectfully,

R. A. BALLINGER, *Secretary.*

EXHIBIT B.

CHICAGO, ILL., January 30, 1911.

Hon. R. A. BALLINGER,

Secretary of the Interior, Washington, D. C.

DEAR SIR: I acknowledge receipt of your letter of January 27 last, and have carefully noted your statements in reference to the belief of your department that the removal of the Camp McDowell Indians to the Salt River Reservation in Arizona would be to their interests.

After a thorough investigation of the question in Arizona by myself, consulting with the leaders of the tribe and the tribe themselves, and further consultation with eminent men in full position to pass judgment on such a question, I thoroughly disagree with your department that it is to the best interests of these Camp McDowell Indians to move, and I positively know it is not their wish to move.

I endeavored in my communication of November 8, 1910, to fully and completely set out reasons for the above position and further gave you therein ample facts to show it was absolutely contrary to the desires of the tribe that they be moved from this reservation to the Salt River Reservation.

If there be a saving to the Government of \$45,000—as you state in your letter—if these Indians are not moved, then, if the Government could be convinced that the condition of these Indians could be immeasurably improved for them to have an expenditure of a small amount right at Camp McDowell, we could accomplish a double purpose of saving the Government money and making it possible in making valuable citizens of these Indians.

The dam that these Indians want, and which the engineers assure us would furnish the agency with all the water it could possibly need, we are prepared to show, by competent engineers, would cost less than this \$45,000 expense which you claim it would cost the Government to move them. We earnestly and sincerely believe that your department has been unintentionally misled in reference to the removal of these Indians of the Camp McDowell Agency being to their interests and advantage, and if you care to give us the opportunity we would be more than pleased to submit to you, in whatsoever form you may suggest, full evidence of the desires of these Camp McDowell Indians, and also more complete information which we believe would convince your department that it is not only contrary to the best interests of these Indians to move them to the Salt River Reservation, but that with a comparatively small expenditure of money they can be immeasurably benefited by being left on the Camp McDowell Reservation, where in a short time they will become producers instead of wards.

These Indians are not a lazy, shiftless, and immoral band, but are industrious, pastoral people, and history shows that their parents were invaluable to this Government in the settlement of the southwestern country, their scouting and their faithfulness alone being responsible for the rounding up of the Geronimo band of renegades in the eighties. All they need is a little help from the Government to put their farms in condition where they can be cultivated, and this particular band of Indians

will soon become good citizens of this Government, and are yearning for this time to come, and, in fact, have made great progress when we consider the untilled condition of much of the land which they occupy.

We know that you, as the head of your department, are a fair-minded man, and are acting upon information which you believe is correct, and that you are therefore sincere in your position, but we are anxious to show you the grave error that would be committed if these Indians were moved, and we want to assure you that whatever we are doing on their behalf we are desirous and anxious at all times to have your approval and approbation.

Respectfully,

CARLOS MONTEZUMA.

EXHIBIT C.

DEPARTMENT OF THE INTERIOR
Washington, March 11, 1911.

Dr. CARLOS MONTEZUMA,
72 East Madison Street, Chicago, Ill.

SIR: The office is in receipt by reference of the department of your letter of January 30, 1911, regarding the removal of the Camp McDowell Indians to the Salt River Reservation.

After careful consideration the office is still of the opinion that it would be to the best interests of the Indians on the Camp McDowell Reservation to move to the Salt River Reservation and accept allotments there. Careful investigation by experienced field men shows that it is not practicable to irrigate sufficient land on the Camp McDowell Reservation to afford allotments to the Indians there; that at the outside about 1,300 acres only could be furnished with water, which would not be sufficient; and that, owing to the treacherous character of the stream from which the waters would be taken, the irrigation and diversion dams would be subject to damage during times of flood. Something over \$9,000,000 has been expended in the project from which waters are obtained to supply available lands on the Salt River Reservation. The project there is an assured one. If the Indians from the Camp McDowell Reservation will move to and accept allotments on the Salt River Reservation, it will practically mean a guaranty to them of a permanent water supply, while if they remain on the Camp McDowell Reservation the facilities for obtaining water at best are precarious.

It should be understood at this time that the present plans of the office do not contemplate allotments to Indians of the lands now embraced in the Camp McDowell Reservation, and the Indians should understand that if they agree to move and accept allotments on the Salt River Reservation they will be given irrigable lands there; being allowed also to use the lands within the present Camp McDowell Reservation in common for agricultural, grazing, or timber purposes. The office does not expect to insist on the removal of these Indians to the Salt River Reservation, but will point out to them why it will be to their material advantage to go there. Sufficient irrigable land on that reservation will be retained to afford allotments at least of 5 acres with assured water rights, which will be in the nature of a standing invitation to these Indians to go to the reservation and select allotments there whenever they care to avail themselves of this privilege. It will prove to the material interests of these Indians, of course, to remove to and accept allotments on the Salt River Reservation at the earliest practicable date, and for your information it may be said that recently the superintendent of the Camp McDowell Indian School advised the office that 42 of these Indians had not only agreed to but had actually gone to the Salt River Reservation and selected the lands there wanted in allotment. This action on the part of the Indians is very gratifying to the office, mainly because it is an indication of the fact that the Indians themselves are beginning to see in which direction their best interests lie.

In order that there may be no misunderstanding, however, on your part in connection with this matter, you are further informed that the Executive order of June 14, 1879, created the Salt River Reserve for the use of the "Pima and Maricopa Indians;" and before allotments can actually be made on the Salt River Reservation to the Indians now on Camp McDowell Reservation, it will be necessary to procure a modification of the Executive order referred to so as to authorize the Secretary to locate thereon such other Indians as he may deem advisable. The matter has by letter of even date herewith been submitted to the department for transmission to the President in order to procure the necessary enlargement of the Executive order of June 14, 1879.

After the Camp McDowell Indians have accepted allotments of irrigable land on the Salt River Reservation the office may consider the advisability of allotting to them in severalty the lands within the Camp McDowell Reserve.

Respectfully,

C. F. HAUKE,
Acting Commissioner.

EXHIBIT D.

APRIL 1, 1911.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEAR SIR: Replying to letter to me of March 11, 1911, signed by C. F. Hauke, Acting Commissioner, which purports to be reply to my letter of January 30, 1911, regarding removal of Camp McDowell Indians to Salt River Reservation.

You state that 1,300 acres of land in Camp McDowell can be irrigated; this, with the timber and grazing land in this reservation that need not be irrigated, will make ample allotment for the Mohave-Apaches, and is exactly that for which we are contending.

We feel gratified that you should so closely agree with us when you state that 1,300 acres in this reservation can be irrigated. We are reliably informed that more can be successfully irrigated, but take it on your own statement, and we can make an allotment giving to each Indian—man, woman, and child—more irrigated acreage than you offer in Salt River Reservation, and with the timber and grazing land added to this, we have just what we want and that for which we are contending.

Also your statement confirms our contention that the cost is comparatively light, as it must be with only 1,300 acres to irrigate. Your contention that the "treacherous character of the stream from which the waters would be taken, the irrigation and diversion dams would be subject to damage during times of flood" is not substantiated from reports of competent engineers who have examined this location for us with the view of ascertaining the practicable establishment of irrigation. They report it is amply practicable, that there is a natural formation that makes it a comparatively cheap proposition, and one in every way reasonable, and at a cost far below what your own department estimated would cost the Government to move the Mohave-Apaches to the Salt River Reservation, namely, \$45,000.

From a stenographic report of a conference between Chief Yuma Frank, with three other Mohave-Apache Indians, and your Inspector E. B. Linnen, held at Sacaton, Ariz., February 22, 1911, said Inspector Linnen urged upon the Mohave-Apaches to take 5 acres of land in the Salt River Reservation, stating they would not have to move there, but the Government was giving them this in addition to its present purpose "to give to each man, woman, and child 10 acres of farming land and 40 acres of grazing land, making a total allotment of 50 acres to each member of the tribe of the Camp McDowell Reservation land;" and the inspector urged Chief Yuma Frank to tell his tribe that the Government would allot the Camp McDowell land as above quoted, on which they could live, but in addition wanted to give each Indian 5 acres in Salt River Reservation which they could "rent out." This proposition was repeatedly urged upon Chief Yuma Frank by Inspector Linnen in a conversation, the typewritten report of which occupies over four pages, single space.

Your letter to me of March 11, 1911, states emphatically:

"It should be understood at this time that the present plans of the office do not contemplate allotments to Indians of the lands now embraced in the Camp McDowell Reservation."

For what purpose do your agents and inspectors so flagrantly misrepresent the facts? Is this what your department countenances as fair treatment to these Indians? Is this an illustration to you that your agents, upon whose information you form your conclusions are, to say the least, using peculiar methods in urging this tribe to follow its "best interests" and move to Salt River Reservation?

We care not what may be the selfish interests of individuals to have these Mohave-Apaches move to the Salt River Reservation and to give up natural rights which they have in the Camp McDowell Reservation, a place they like, where they have for years resided and still wish to reside, and we recognize the sincerity of the chief officers in the Department of the Interior in believing that it is for the best interests of these Mohave-Apaches to move; but we want to repeat what we have written before: Your information that these Mohave-Apaches want to move is an error; that if you will, unbiased, examine the conditions, you will agree with us that it is not to their "best interests" to move; that you are being misled as to those who have consented to move, and that your information as stated to me in your letter of March 11, 1911, that "42 of these Indians had not only agreed to but had actually gone to the Salt River Reserva-

tion and selected the lands there wanted in allotment," is, if meaning Mohave-Apache Indians, entirely untrue; but that the facts are that every subterfuge to get these Indians to move to Salt River Reservation against their avowed declaration to stay at Camp McDowell, is being used by your subordinates in Arizona.

Why this great haste to move these Indians? Your department, we should think, would be glad to cease with such tactics as your Inspector Linnen used February 22, 1911 (heretofore set forth), and let this subject be freely, openly, and fairly discussed, and then a decision made after full consideration of all sides.

The evident desire of some of your officials to hurry this matter when no reason on earth can be advanced for the necessity of haste, forced an appeal to Congress, and as you know, the matter is there pending.

Why do you permit your inspectors and agents to continuously urge upon these Mohave-Apaches "immediate selection," moving and allotment in this Salt River Reservation, when you have been officially notified that they do not want to go; and also when you further state in your letter to me of March 11, 1911, that your department has as yet no legal authority to place any Indians on this Salt River Reservation except "Pima and Maricopa Indians"? I refer to that paragraph of your said letter reading as follows:

"In order that there may be no misunderstanding, however, on your part in connection with this matter, you are further informed that the Executive order of June 14, 1879, created the Salt River reserve for the use of the 'Pima and Maricopa Indians' and before allotments can actually be made on the Salt River Reservation to the Indians now on Camp McDowell Reservation, it will be necessary to procure a modification of the Executive order referred to so as to authorize the Secretary to locate thereon such other Indians as he may deem advisable. The matter has of even date herewith been submitted to the department for transmission to the President in order to procure the necessary enlargement of the Executive Order of June 14, 1879."

The Mohave-Apaches do not want to be wards, and with a little Government help (less than your department states will cost you to move them to the Salt River Reservation) they would be in a position right at Camp McDowell to demonstrate their fitness to become citizens; and with a fair hearing we devoutly believe their wishes and their welfare will not be trampled under foot by moving these Mohave-Apaches from a land in which they are contented and where nature assists them in their happiness and good, to a land of surroundings foreign to their every mode of life for generations, and peopled with other Indian tribes who for generations have been their sworn enemies.

Respectfully,

CARLOS MONTEZUMA,
*Authorized Representative of Mohave-Apaches Indians,
Camp McDowell Reservation.*

EXHIBIT E.

DEPARTMENT OF THE INTERIOR,
Washington, April 22, 1911.

DR. CARLOS MONTEZUMA,
72 East Madison Street, Chicago, Ill.

SIR: The office is in receipt of your letter of March 31, 1911, submitting further suggestions regarding the allotment of the Camp McDowell Indians on the Salt River Reservation and the disposal of the lands within the Camp McDowell Reservation.

Nothing is found in your letter which would cause the office to alter the opinion expressed in its letter of March 11, 1911, of the advisability of allotting the Camp McDowell Indians 5 acres of irrigable land with assured water rights within the Salt River Reservation, and that it would not be feasible for the Government to attempt to construct an irrigation project to cover the irrigable lands within the Camp McDowell Reservation.

For your information Executive Order No. 1322, dated March 22, 1911, is set out verbatim:

"It is hereby ordered that Executive order of June 14, 1879, creating a reservation for use of the 'Pima and Maricopa Indians', be, and the same is hereby, amended so as to make said reservation available for use of the Pima and Maricopa Indians, and such other Indians as the Secretary of the Interior may see fit to settle thereon."

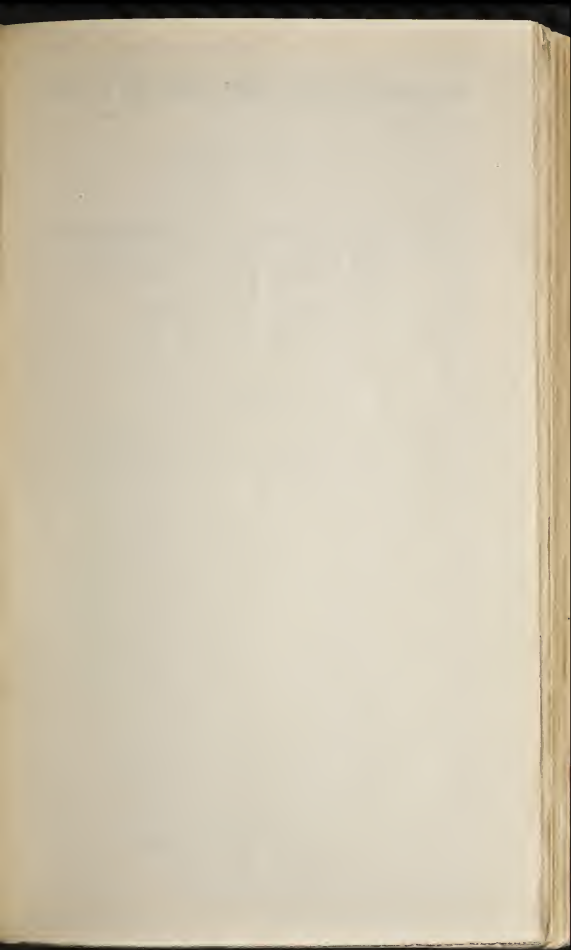
This, of course, will remove any misunderstanding as to the right of the Camp McDowell Indians to allotment on the Salt River Reservation.

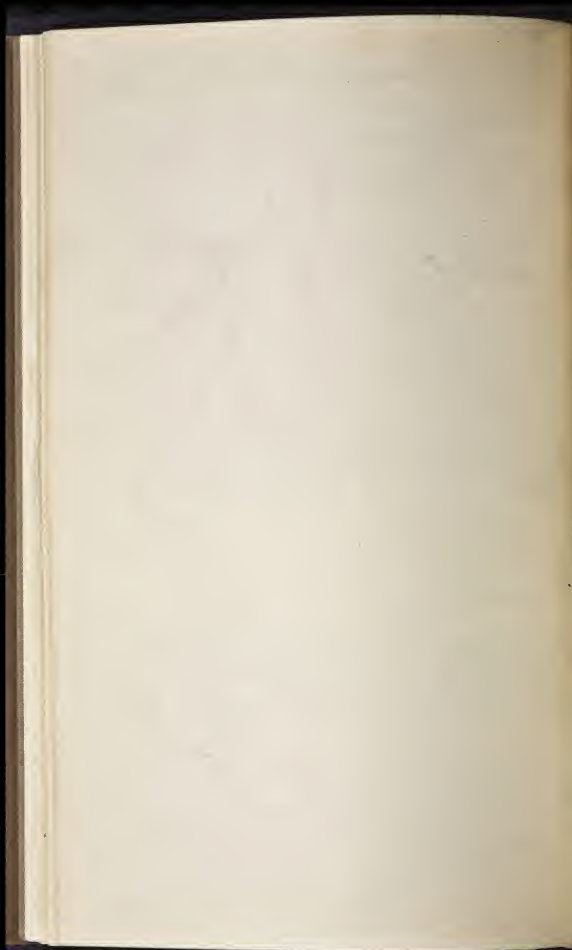
Respectfully,

C. F. HAUKE,
Second Assistant Commissioner.

The committee thereupon, at 12 o'clock m., adjourned.

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OPENING OF THE CROW (MONT.) INDIAN RESERVATION

2
HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

SECOND SESSION

ON

S. 2378

A BILL FOR THE OPENING AND SETTLEMENT OF A
PART OF THE CROW INDIAN RESERVATION
IN THE STATE OF MONTANA

PART 4

DECEMBER 13, 1916

Printed for the use of the Committee on Indian Affairs



WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

COMMITTEE ON INDIAN AFFAIRS.

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OPENING OF THE CROW (MONT.) INDIAN RESERVATION.

WEDNESDAY, DECEMBER 13, 1916.

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met in the committee room, Capitol, pursuant to adjournment, Senator Henry F. Ashurst presiding.

Present: Senators Ashurst (chairman), Owen, Walsh, Clapp, La Follette, Fernald, Gronna, and Curtis.

Also present: Edgar B. Meritt, Assistant Commissioner of Indian Affairs.

The CHAIRMAN. The committee will come to order.

Senator WALSH. Mr. Chairman, the Crow bill is a special order for this morning, is it not?

The CHAIRMAN. Yes. On August 14 there was a meeting of the committee, and I call your attention to page 120 of the hearings. At that time the Crow bill was set down for final disposition at the request of the Senator from Montana (Mr. Walsh), who asked unanimous consent that it be disposed of this morning, and that unanimous consent order stands, unless repealed by another unanimous consent order.

Senator OWEN. What were the facts with regard to that matter that were ascertained at that time?

The CHAIRMAN. A most voluminous hearing was held.

Senator CURTIS. If we are to proceed now, Mr. Chairman, I desire to say that I have a letter from the Secretary of the Interior that I would like to have read.

The CHAIRMAN. I will have the clerk read the letter.

Senator OWEN. I was under the impression, Mr. Chairman, that we were going to vote on the matter to-day.

The CHAIRMAN. That is the purpose.

The clerk read, as follows:

THE SECRETARY OF THE INTERIOR,
Washington, December 12, 1916.

MY DEAR SENATOR: Under Senate resolution No. 212, Sixty-fourth Congress, the Secretary of the Interior was directed "to permit the said Crow Indians to hold a general council of all the members of that tribe and to make provision that no person or persons who desire the opening of the reservation, nor members or officers of the Indian Bureau who oppose the opening of it, shall attend such council nor influence in any way the conduct of said council or its findings, and that permission to attend said council shall be freely granted to all members of the tribe of Crow Indians who desire to do so."

I beg to advise that in accordance with this resolution the council of the Crow Tribe was duly convened on Friday, August 4, 1916, at which the following reso-

lution protesting against any further reduction of the reservation was unanimously adopted:

- "Whereas there has been introduced in the Senate of the United States a bill (S. 2378) to open that portion of the Crow Indian Reservation west of the Big Horn, also that portion of the reservation east of the Little Horn River, to white settlement under the homestead act; and
- "Whereas there has been introduced and passed in the Senate of the United States a resolution granting to the Crow Indians the right to hold a general council undisturbed and free from outside influence whatsoever, in order that they may consider said bill S. 2378 with a view of consenting to its provisions or rejecting same; and
- "Whereas we, the Crow Indians, have met in council and have considered thoroughly the provisions of said bill and now attest by our thumb prints and signatures attached hereto that the following is a true record of our wishes:
- "That the Crow Indians this day in undisturbed council have voted against the provisions of the said Myers's bill, believing it not to be to their best interests that the honorable Congress should consider at this time the action contemplated in said bill. That this view is unanimously held, viz, that by retaining our reservation intact, developing its resources to the fullest extent which are to be found in the undeveloped mineral lands, coal lands, oil lands, and timbered lands of our reservation, and the undeveloped water-power sites on our reservation; in the wise expenditures of our funds held in trust for stock and other purposes to be apportioned to us individually; in the reduction of the unnecessary operative expenditures of our reservation. That the surplus lands that would be subject to homestead entry are of such a character that entrymen can not possibly make a living therefrom by reason of its roughness and scarcity of water, as lands of similar character in the last ceded strip have in many cases not been homesteaded only when sold in very large tracts at only \$2 per acre; Therefore be it

"Resolved, By the Crow Tribe of Indians in council assembled this 5th day of August, A. D. 1916, that we most respectfully petition the honorable Congress of the United States to respectfully comply, if possible, with these our sincere requests.

"That we hereby empower any delegation this council sends to Washington to present our views and wishes and that such delegates be paid \$3 per day and all necessary travelling expenses.

"We respectfully ask that members of the Senate committee direct the Commissioner of Indian Affairs to use such funds belonging to the Crow Tribe not otherwise appropriated to pay the expenses of this delegation."

In this connection I beg to refer you to Article XI of the treaty of May 7, 1868 (15 Stats. L., 649, 652), providing as follows:

"No treaty for the cession of any portion of the reservation herein described which may be held in common shall be of any force or validity as against the said Indians unless executed and signed by at least a majority of all the adult male Indians occupying or interested in the same, and no cession by the tribe shall be understood or construed in such manner as to deprive without his consent any individual member of the tribe of his right to any tract of land selected by him as provided in Article VI of this treaty."

Cordially, yours,

FRANKLIN K. LANE, *Secretary.*

HON. HENRY F. ASHURST,

Chairman Committee on Indian Affairs,

United States Senate.

Senator CURTIS. Mr. Chairman, I have been requested to have read to the committee the showing made at the council. This paper was handed me yesterday, with the names signed to it. I ask that it may be read, if it has not already been read into the record. I had to leave the committee at the last meeting and I do not know whether it was read or not. Senator Gronna informs me that it was read, and is in the record. Mr. Chairman, I received yesterday by registered mail—and I would like to have the record show that this was mailed December the 8th and delivered here on December the 11th—a petition which is addressed to Messrs. Curtis, Lane, and the chairman,

and was delivered at my office because it was addressed to me. I wish to have it read and filed. It seems to be from members of the tribe who did not attend the meeting of the council.

The CHAIRMAN. You desire to have this read?

Senator CURTIS. Yes. I received it and spoke to you about it yesterday and you asked me to present it. It was addressed to the three of us.

The CHAIRMAN. The clerk will read.

The clerk read as follows:

RESOLUTION BY THE CROW INDIANS IN COUNCIL DULY CALLED BY THE AUTHORITY OF THE COMMISSIONER OF INDIAN AFFAIRS HELD ON NOVEMBER 22, 1915, AT CROW AGENCY, MONT.

Be it resolved by the Crow Tribe of Indians of Montana in council held at Crow Agency, Mont., which was duly called by the superintendent of the Crow Agency, under the direction of the honorable Commissioner of Indian Affairs, that the members of said council in attendance from each district on the Crow Reservation, representing the Crow Tribe of Indians and speaking for themselves and on behalf of all of the members of the Crow Tribe of Indians, respectfully request and petition the President of the United States, the Congress of the United States, the honorable Secretary of the Interior, and the honorable Commissioner of Indian Affairs to use all honorable means within their power to prevent the throwing open of the Crow Indian Reservation in Montana, or any portion thereof, for purchase and settlement by the white people.

We have been informed and have reason to believe that it is the purpose and intention of certain white men residing at Hardin and Billings, Mont.; Sheridan, Wyo., and other places adjacent to the Crow Indian Reservation to make an effort through the Congress of the United States to have thrown open our said Crow Reservation to settlement and purchase by the white people, and we earnestly and vigorously protest against same and desire you to know that this resolution is a protest on the part of the tribe of Crow Indians of Montana against such opening of their reservation and voices the wishes and sentiments of practically the entire tribe of Crow Indians.

We, the Crow Indians, represent that about two years ago we were furnished with a tribal herd of cattle of upwards of 9,000 head. This herd increased until at the present time we have about 12,500 head in said tribal herd. The individual cattle held by Crow Indians amount to at least another 3,000, so that we have at the present time between 15,000 and 16,000 head of cattle belonging to us Crow Indians. We also have several thousand horses for the intelligent propagation of which we have purchased a large number of fine registered stallions, and we need for our own use a very large portion of our range and reservation for the grazing of our herds of cattle and horses, which will increase steadily in numbers from now on, until we hope within the next few years to use all of our range for the grazing of our own cattle and other live stock, as we have large sums in the Treasury available for the additional purchase of more cattle.

We further represent that we have on the Crow Indian Reservation irrigation works which have cost the Crow tribe of Indians, not the Government, about \$1,250,000, which irrigates large tracts of lands in the valleys, and large amount of these lands are being farmed by the members of the Crow Tribe of Indians, and they are increasing their farming and agricultural operations each year. This year the acreage which was in crops and the amounts of crops raised have far exceeded that of any previous year. We intend to increase our farming and agricultural pursuits and want our lands and reservation to remain undisturbed. We would ask in this connection that it is nothing more than fair to permit us time enough to adapt ourselves to the new conditions forced upon us, to the new mode of living, and the new competitive methods of gaining a livelihood; the new line of reasoning, and all of these new conditions which the white man, with his knowledge of things handed down from ages and which it has taken him this length of time to master, and which he now asks us to assimilate in a fortnight.

We further represent that on the ceded portion of the Crow Reservation heretofore thrown open, lying north of our present reservation, there is still a large amount of those lands in said ceded strip which still remain unsold and

undisposed of to the white people, approximately 280,000 acres still remaining unsold; that on the portion that has been sold a great many delinquencies have occurred, delaying, in many cases, payment on said lands for as long a period as two and three years. This in effect shows that most of the lands that have been ceded are not occupied by bona fide settlers but are bought by large interests and individuals for purely speculative purposes and as a result of this nature of buying, we, the Crow Indians, who ceded this territory in good faith, suffer because of the delay in payments for same, and we firmly believe that if the portion now intended to be opened by the people of Hardin, Billings, and Sheridan were considered the above conditions would still exist, only upon a much larger scale, as the character of the lands to be opened are such that it is a question that bona fide settlers can make their living therefrom. The records of the Land Office show that there is approximately 600,000 acres of vacant public domain unsold and undisposed of lying adjacent to the Crow Indian Reservation, and 19,000,000 in Montana, which further shows that there is no necessity for the opening of the Crow Reservation at the present time. And we are reliably informed and know that a large amount of our ceded lands have gone into the hands of large stockmen and speculators instead of going into the hands of the homesteaders and the home builder as was the intention when said ceded strip was thrown open.

We further state that the grazing lands of our Crow Reservation, other than those which we are using for our own tribal herds and stock at the present time, has been leased for grazing purposes for a period of five years from February 1, 1916, the revenues derived from such leases being valuable to our tribe and which, aside from furnishing us Crow Indians with certain moneys, furnishes funds with which to properly conduct and administer the affairs of our reservation. The fact should not be overlooked that the Crow Reservation is one of the very few reservations of the country that is maintained absolutely upon its own resources. Congress each year provides only \$6,000 by treaty for the pay of five positions upon this reservation. Aside from this every penny that goes to defray the operative expenses of our reservation is derived from revenues that are received in the way of lease moneys, etc. In the event the opening is considered the great amount necessary to defray these expenses, which amounts to something over \$100,000 each year, must necessarily come from Congress.

We further represent that many of our children, all of whom were born since the allotments were made on the Crow Reservation, are still to be allotted lands on said Crow Reservation, and that a large amount of other lands on said reservation will be needed for allotting children still to be born to the Crow Tribe of Indians, and still another great amount will be needed to allot those 400 eligible under Allotting Agent Hatchett. Thus it can be seen that when we have all received our allotments the best of our lands will have passed into the hands of Crows, leaving only a few high and barren ridges for settlement; that we need to provide for our future as to our lands, our homes, our cattle and stock, our agricultural lands and grazing lands, our irrigation, and to protect our fences about our present reservation and division fences which have been constructed at a large expense to the Crow Tribe of Indians, all of which would become a total loss in case our reservation was thrown open to settlement.

We further respectfully represent that the present is no time to dispose of our lands and reservation and would not be to the best interest of the Crow Tribe of Indians, for the reason that our lands would not bring but a very small amount of money at the present time, nor the value thereof, but such lands will be much more valuable and bring us a much larger revenue in years to come if it then be found necessary to open our Crow Reservation.

We further state in this connection that it has been shown us here that the time has not arrived when the two peoples are ready to intermingle as one, each recognizing the other as his equal; but, on the other hand, a chasm exists between the two people, evidently because of racial feeling, the white man feeling much superior to the Indian, therefore unfit for his association, as evidenced by the fact that jim-crow tables are in existence in both Hardin, Mont., and Crow Agency, Mont.; that the public schools of Wyola and Lodge Grass have refused to admit Indian children who were eligible by reason of their legal status and were shown the greatest of racial hatred. In some instances this feeling grew to such an extent that parents of these white children removed their children to public schools at other places where there were no Indians.

Surely it can not be contended from any point of reasoning that the Government in justice to us should longer entertain the diabolical intention of these

designing politicians and land sharks and stockmen, who, while patting us on the back with one hand conceal in the other a dagger with which they intend to bleed us: Therefore be it

Resolved, That for the reasons herein set forth, and others that will be advanced by our delegates, the Crow Tribe of Indians in council assembled this 22d day of November, A. D. 1915, vigorously protest against the throwing open of their Crow Indian Reservation in Montana, or any part or portion thereof, and that we represent the Crow Tribe of Indians and each district on the Crow Reservation and speak for and on behalf of ourselves and the entire Tribe of Crow Indians: Be it further

Resolved, That we empower our chairman to select such men as have shown themselves qualified by their progressiveness to act in the capacity of representatives to speak for and on behalf of the tribe before the honorable Secretary of the Interior and the honorable Commissioner of Indian Affairs and before the different committees of Congress, and that after such selection is made we hereby agree that they and only they shall be our representatives in Washington; that if any others than those elected by this council appear in Washington or Individuals through letters protest against the proceedings of this council, we respectfully ask that the Commissioner or Secretary and the honorable Congress of the United States refuse to accept same as being the wishes of the Crow Indians: Be it further

Resolved, That a copy of this resolution be sent to the President of the United States, to the Congress of the United States and the presiding officer of each body thereof, to the honorable Secretary of the Interior and the honorable Commissioner of Indian Affairs, and we ask you and each of you to use all means within your power to prevent the throwing open of our reservation or any part thereof.

The said resolution was duly passed after being voted on as follows:

Votes for:

Plenty Coos, Charles Clawson, Bull Dont Fall Down (thumb mark), Bear in the Middle (thumb mark), Bird Hat (thumb mark), Holds Enemy (thumb mark), Sebastian Long Bear, James Buffalo, Richard Cummins, Austin Stray Calf, Joe Child in in Mouth, Luke B. Rock, Richard Daylight, Fred Oldhorn, G. Hart Thomas, George W. Hogan, Elmer Takes Wrinkle, Door (thumb mark), Sidney Blackhair, Old Coyote (thumb mark), Young Yellow Wolf (thumb mark), Vletor Singer, Jasper Long Tail, Charles Yarlott, Joseph Martinez, Peter Bompard, Joseph Spotted Rabbit, John Frost, James Carpenter, Blake Whiteman Runs Him, Iron Fork (thumb mark), Kills Jacob Woodtiek (thumb mark), Strong Heart (thumb mark), Good Horse (thumb mark), Bushy Head (thumb mark), Shot in Nose (thumb mark), Old Rabbit (thumb mark), Looks at Ground (thumb mark), Puts on Antelope Cap (thumb mark), Albert Anderson, Comes up Red (thumb mark), Stops (thumb mark), Left Hand (thumb mark), Thomas Medicinehorse, Frank Hawk, Top of Moccasin (thumb mark), Tie Crooked Arm, Francis La Forge, Old Horn (thumb mark), Billy Steel, Louis Bompard, The Eagle (thumb mark), Falls Down Old (thumb mark), Dont Mix (thumb mark), Plain Owl (thumb mark), Medicine Mane (thumb mark), Pretty Paint (thumb mark), Takes Enemy #2 (thumb mark), The Moon (thumb mark), Plenty Wing (thumb mark), Bright Wing (thumb mark), Sits Down Spotted (thumb mark), Plenty Hawk (thumb mark), No Horse (thumb mark), Mrs. Thomas Kent (thumb mark), Frank Reed, Robert Yellowtail, Barney Looks Back, Harry Whiteman, Curley (thumb mark), White Man Runs Him (thumb mark), Two Leggins (thumb mark), Medicine Crow (thumb mark), Crooked Arm (thumb mark), Young Swallow (thumb mark), Dominic Old Elk, Thomas Longtail, Thomas Tobacco, Thomas Stewart, Isaac McAllister, Alphonsus Child in Mouth, Thomas Big Lake, Leo Hugs, Leo Bad Horse, Mattie W. Small, George White Bear, White Dog (thumb mark), Scolds Bear, (thumb mark), Knows His Coos (thumb mark), Sharp Nose (thumb mark), Pretty Horse (thumb mark), Frank Yarlott, Paul Scott, Eric Birdabove, Hole, Henry Russell, Horbert Old Bear, Frank Bethune, Philip Ironhead, Shield Chief (thumb mark), Flights Wellknown (thumb mark), Eagle Turns (thumb mark), Plenty Buffalo (thumb mark), Bird Wellknown (thumb

mark), High Medicine Rock (thumb mark), Walks with Wolf (thumb mark), Other Bull (thumb mark), Does Everything (thumb mark), Bird Horse (thumb mark), Bird Above (thumb mark), Eastosh (thumb mark), Big Medicine (thumb mark), Enos Light, Arnold Costa, Covers His Face #2 (thumb mark), William Bends, James Big Shoulder, Lots of Stars (thumb mark), Eli Blackhawk, Knows the Ground (thumb mark), Goes Together (thumb mark), Bear Goes to Other Ground (thumb mark), Packs Hat (thumb mark), Yellow Head (thumb mark), Flat Dog (thumb mark), Snapping Dog (thumb mark), Shot in Hand (thumb mark), White Hip (thumb mark), Spotted Rabbit (thumb mark), Looks With Ears (thumb mark), Covered Up (thumb mark), Three Foretops (thumb mark), Coyote Runs (thumb mark), Barney Old Coyote, Richard Wallace, Holds Up (thumb mark), John Sit Down Spotted, James Hill.

Votes against: None.

Witnesses to all signatures and thumb marks: Robert Yellowtail, Fred E. Miller.

Attest:

RICHARD WALLACE, *Chairman*.
ROBT. YELLOWTAIL, *Secretary*.

We, the undersigned, Richard Wallace, chairman of the Crow Indian Council held at Crow Agency, Mont., on November 22 and 23, 1915, and Robert Yellowtail, secretary of the said council, do hereby certify that the above and foregoing is a true copy of resolution passed by said Crow Council on the 23d day of November, 1915, and that the names attached thereto have been compared with the names signed to the original resolution and that the same are correct except that the thumb-mark imprint does not appear upon the copies.

RICHARD WALLACE, *Chairman*.
ROBT. YELLOWTAIL, *Secretary*.

Senator CURTIS. Mr. Chairman, Senator Gronna has called my attention to the fact that this resolution has not been printed, and I would like to have it read to the committee. It is a resolution passed by the Crow Council. It does not seem to have been printed in the record and I would like to have that read, and even if it has been printed there will be no harm in having it read again.

The clerk read as follows:

CROW AGENCY,
November 14, 1916.

Senator CURTIS, Senator LANE, and Mr. CHAIRMAN, AND THE OTHER FRIENDS OF THE CROW INDIANS:

You helped to pass a law that the Crow Indians might hold a council of all the tribe without interference to defend ourselves against the Myers bill and conditions on the reservation. We do not like that bill and have one of our own.

We could not hold a council that we are satisfied with.

We have chosen our head men and have raised money to pay our expenses to go to Washington to appear before your committee on December 13, the time you set.

We know what we want: We want to speak for ourselves and ask you to help us get permission for us to go in time. We can not get the money due to us or control of our own land or our own money. We ask you to help us so we can talk to you face to face.

Many of our people are very poor and suffering because of our troubles this winter. We ask you to help us to come there and tell you what we want soon.

Charles Ten Bear, E. T. Wrinkle, E. F. Bear, Howell Hoops, Dexter Williams, Thomas Jefferson, Wm. Shane, Goes Together (thumb mark), Bear Goes To Other Ground (thumb mark), Bear In Middle (thumb mark), Pretty Horse (thumb mark), Cut Ear, Chief Child (thumb mark), Comes Up Red (thumb mark), Alphonsus Hole (thumb mark), Talks Everything, Looks at the Ground (thumb mark), Froze (thumb mark), Plays With Himself (thumb mark), Jack Stewart, Frank Bethune,

Holman Ceasley, Victor Three Toons, Glen Bird, Herbert Old Bear, Edward Shane, Ned Old Bear, Henry Shimbone, Thos. Medicinehorse, Percy Stops, Fred Froze, John Adams, William Bends, Charges Strong (thumb mark), P. P. C. Strong, Max Big Man, Frank Stewart, Clark Other Bull, C. T. Horse, Thomas Stewart, John Wallace, Albert Anderson, Francis Ten Bear, Mark Red Bird, Sampson B. Ground, Leads The Wolfe (thumb mark), Old Horn (thumb mark), Sees With His Ears (thumb mark), Charges Plenty, Herry Whiteman (thumb mark), Enemy (thumb mark), Plenty Buffalo (thumb mark), No Horse, Passes Everything (thumb mark), Simon Old Crow, Old Tobacco (thumb mark), Yellow Head (thumb mark), Mountain Sheep (thumb mark), Isaac Plenty Hoops, George White Bear, Lots Stars (thumb mark), Clifford White Shirt, In the Hole (thumb mark), Not Mix (thumb mark), Hartford Comes Above.

Senator CURTIS. I will state. Senator Walsh, that that was handed me yesterday and my attention was called to some of those figures, and I called the attention of the gentleman who handed it to me to the fact that you had presented some figures that did not just agree with those, and I have not had time to read either your figures or those since.

Senator WALSH. I presented the official figures.

Senator CURTIS. I told him that you had and asked him to look over the hearings for them.

STATEMENT OF HON. THOMAS J. WALSH, A SENATOR FROM THE STATE OF MONTANA.

Senator WALSH. Mr. Chairman, the matter to which Senator Curtis now refers is doubtless a statement made in the paper which has just been read, to the effect that of the lands included in what is known as the ceded strip, opened in 1904, my recollection is—12 years ago—there remain undisposed of 250,000 acres. Similar statements have been made in the course of the discussion before this committee to which this bill has given rise. They have all been met, and every other suggestion has been met in the course of these hearings. I refer you, for instance, to page 38 of the hearings. It is nearly a year ago that a similar declaration was made. I said as follows:

I call your attention to the fact that in 1904 what is known as the ceded strip was opened. That is the northeastern portion of the reservation. It embraces an area of 1,110,000 acres. Senator Curtis asked as to what was left of the land so kept. I have a report from the receiver of the United States land office at Billings, Mont., furnished me, as my recollection is, about the 1st of November last. It discloses that at that time, of the 1,110,000 acres, there were left 120,000 acres of land classified as coal land and not open to entry, and 102,789 acres of noncoal land. That is 90 per cent of those lands have been taken, and presumably what is left is a mere remnant.

Senator CURTIS. Probably rough land.

Senator WALSH. Rough land. Now, I have further information from the Land Office to the 1st of February, showing that that was reduced by the 1st of February to 90,000 acres; in other words, that in three months a reduction of 12,000 acres was made, or at the rate of 3,000 acres per month. That would be 4,000 acres per month, and three months have now passed since then, so I assume there is probably 85,000 acres of the 1,110,000 acres that are left. I might also say that the Indians were guaranteed that those lands would produce a million and a half, and they have produced twice that amount, at least.

Those are the actual facts with respect to that matter. In the same connection the statement was made that homesteaders would

not take this land, and that the only way it was possible to get rid of the lands was by selling them off in large tracts to parties who wanted to use them for grazing and stock purposes. The fact of the matter is that the original act provided for that disposal by public sale in large tracts, and by the time I came here the system had proven a failure as far as the disposition of the land was concerned, that the pick of the land was taken by that system, and that no more sales were being made at all—they were offered on several occasions—and there were no bidders at all, and we procured an order to be made authorizing their entry under the homestead act, the lands to be appraised—indeed, they were appraised before that time, authorizing their entry under the homestead act by appraisal, and you see the result in the figures that are given. Homesteaders have gone in and have rapidly taken up the remnant of these lands within the ceded strip, and are now cultivating them and raising crops upon them. There has not been an objection offered in this document that you have heard read here that was not offered in a letter which the Secretary addressed to the committee at the outset, and which I canvassed before this committee in the testimony given at these hearings, and I undertake to say now and here, that up to the present time not one valid reason has been urged against this bill.

I call your attention, gentlemen, to the fact that this tribe of Indians under the system which it is proposed now to perpetuate, contrary to the settled policy of this Government for 30 years, has been reduced by 50 per cent. There was a population of 3,500 on this reservation in the year 1885, and according to the figures I gave you, 1,696 of them are living. I called your attention to the fact that the deaths annually exceed the births. I called your attention to the frightful condition of infant mortality upon this reservation. I called your attention to the fact that at least 90 per cent of them are afflicted with tuberculosis, and many of them with trachoma, and other loathsome diseases. I called your attention to the fact that every member of this tribe, men, women, and children, have a proportionate interest in something like 1,400 acres of land, and assuming that there are five members to a family, every family on the reservation can own, and is entitled to practically 7,000 acres of land, and I want to know from anybody how that system can be justified as an economic proposition. Moreover, the reduction contemplated leaves as common property for these Indians, some 350 acres of land, or practically 1,500 acres for every family on the reservation, over and above their allotments, you understand.

Now, you have heard here about how these people have nice herds of cattle—9,000 head put upon the reservation, and it has increased to 12,000. Why, my dear friends, this plan that we propose does not in the slightest degree interfere with that herd nor with its development nor with its continuance. It proposes to leave with the Indians just exactly as they have it now, the very portion of the reservation upon which this herd of cattle is kept, a portion of the reservation that will sustain 25,000 head of cattle. Am I right, Mr. Meritt?

Mr. MERITT. I think that is true, Senator.

Senator WALSH. So, what is the use of talking about it. Furthermore, gentlemen of the committee, you are told about the great irrigation system that these Indians have on this reservation. The irri-

gation system is within the portion of the reservation which is left intact. It does not touch it at all. The irrigation system will continue just as it is. Of course, in my humble opinion, that irrigation system is just a waste of a vast amount of these Indians' money, but good or bad, they have it left.

Reference is made to the treaty—

Senator GRONNA. May I interrupt you just a moment?

Senator WALSH. Certainly.

Senator GRONNA. What about the statement made in this paper here about the large quantity of public land, as I understand it, surrounding this reservation?

Senator WALSH. Senator, that likewise was raised and answered. I will read you what was said. I read from the letter of the Secretary, given at the outset of these proceedings, and to which reference has heretofore been made, making the same statement. You will find it at page 27 of the hearings. That letter stated as follows:

The southern boundary of the Crow Reservation forms a part of the State line between Montana and Wyoming. Large areas of public land are now available for settlement within these two States. A circular issued by the Commissioner of the General Land Office, under date of July 1, 1915, showing the vacant public lands as of that date, gives 19,065,121 acres in Montana and 30,929,969 acres in Wyoming—a total of 49,995,090 acres. It is apparent, therefore, that as far as prospective homesteaders are concerned there is no need of placing additional land in this vicinity on the market at this time.

Now, I commented on that letter as follows:

I am going to ask this committee to open this reservation in order that additional homestead lands may be put upon the market at this time. But these figures are as misleading as the other general declarations in this report to which I have invited your attention. It is true that there are nineteen millions of unappropriated land in our State open to entry, but the Secretary forgot to say that there are only ten millions of this that are surveyed, and, of course, the nine millions left are rocky, rough, broken, inaccessible areas. In other words, there are ten millions of acres of land in the State of Montana still unappropriated and open to entry.

Senator CURTIS. May I ask you a question right there?

Senator WALSH. Just one moment until I finish this statement—and last year there were entries aggregating 3,000,000 acres. So that there is enough land left in the State of Montana at the present rate of appropriation surveyed and open to appropriation to last just three years.

Senator CURTIS. I would like to know if that rough land is good grazing land?

Senator WALSH. Yes; no doubt.

Senator CURTIS. It is good for cattle and sheep?

Senator WALSH. There is no doubt about it. Of course, it is not as undesirable, so far as general utilization for agricultural and stock-raising purposes in a general way—it is not as undesirable as the very summit of the mountains which are included within the forest reserves. That is so much in addition—it would amount to 18,000,000 more in the forest reserves in addition to this 19,000,000 that are here spoken of.

So that if anybody believes that we have more land in the State of Montana than we know what to do with, if he makes a tour of that State his mind will very readily be disabused of that idea.

Senator GRONNA. My idea in asking that question was to follow it up with a question. Is much of this land located right near this reservation?

Senator WALSH. No, sir; I should say that there is practically nothing to-day adjacent to the reservation that is unappropriated. Indeed, I might say, Senator Gronna, that you may go on the Great

Northern Railroad from your State clear through to the Blackfeet Reservation and the eye can reach no unappropriated public land upon either side of the road. Of course, the lands in the southern part of the State are, generally speaking, I should say perhaps more rapidly appropriated than they are in the northern section.

Senator OWEN. Senator Walsh, I observe that this report which was read indicated that there was a treaty in which the vote of these Indians was necessary. What are the facts with regard to that?

Senator WALSH. That, likewise, Senator, was discussed here. It is sufficient to say, however, that the Supreme Court of the United States has held that it is beyond the power of Congress to make a treaty with the Indians that would tie up the hands of a future Congress in disposing of the public land.

Senator OWEN. I know that; but I wanted to know what the agreement was with the people, what the facts were.

Senator WALSH. It has been read, Senator. There was a provision in the treaty to the effect that these lands should not be disposed of without the consent of the Indians.

Senator CLAPP. And that never has been abrogated by the Indians, has it?

Senator WALSH. Oh, no.

Senator CLAPP. I simply wanted it stated for the purposes of the record.

Senator OWEN. The proposition contemplates disregarding that agreement because of what is conceded to be a matter of public policy; is that the theory?

Senator WALSH. Exactly; and the decision on the matter was made.

Senator CURTIS. It is the Lone Wolf case.

Senator OWEN. I think we are all familiar with that.

Senator WALSH. It was made some 10 years ago. Since that time no attempt has ever been made, as far as my information goes, to get the consent of the Indians whenever the Congress of the United States conceives that it is to the interest of the Indians and of the country that these reservations should be opened. If so, they are opened.

Now the only argument that I ever heard advanced by the Interior Department, or the Indian Bureau, in opposition to this measure consists of two; one is that if we open this reservation the saloons will be established all over the ceded portions and the opportunity for Indians to get liquor will be proportionately increased. I also met that argument by saying that they are going to vote for prohibition in Montana, and it would become the law before it would be possible to open the reservation under the act. But that was received with some skepticism. We have voted in favor of State-wide prohibition. It was carried at the last election by 30,000 majority. So that objection is done away with.

Senator OWEN. You voted for woman's suffrage also, did you not?

Senator WALSH. We voted two years ago for woman's suffrage. And another thing was that the Indians did not consent to this. Well, I deal with that here. I defy anybody to go on any Indian reservation in this country and secure the consent of the Indians to the opening of a reservation against two influences—first, the opposition of the Indian Bureau. The Indians know perfectly well that

the Indian Commissioner, for reasons satisfactory to himself, is against this bill. I need not say to the members of this committee what a tremendous influence that has with these Indians, not only because they look upon him as the guardian of their interests primarily, but more than that because the more influential of them like to be in favor with the commissioner. But more than that, Mr. Chairman, is the influence of the lessees who have been given the right to run their stock on this reservation. If you open the reservation of course you will not manufacture any more millionaires off of the leasing privileges of the Crow Reservation. We have made several of them. They are on the reservation. They have great interests there. They and their agents or representatives are on the reservation all the time traveling around among the Indians. They are shrewd politicians and know the Indians. It is a very easy thing to hire an Indian as superintendent of some haying operation or put him in charge of a herd of stock, and things of that kind. He is not insensible to his own interest nor to the influences of his employer, and he does not want the reservation opened.

I tell you gentlemen that if we did not have the leasing system on the Crow Reservation this reservation would have been opened 10 years ago, and when you go back to trace any opposition that there may be to the plan by the Indians on the reservation, you will run up against that influence practically every time. You can not figure on anything like a sound business proposition in leaving 7,000 acres of land in the hands of an Indian family, and you can not figure anything like a business proposition in devoting this marvelously fertile land—because despite anything that may be said in these reports that you have read, this land will be greedily absorbed by homesteaders who want to cultivate it and raise crops on it. You can not figure it out as an economic proposition, that that land ought to be devoted exclusively to the growing of the native grasses without any cultivation at all.

Senator CLAPP. Senator Walsh, what would you say to this proposition: If you owned 7,000 acres of land there that was without any tax burden, you would not be disposed to part with it at the present price, would you?

Senator WALSH. Why, Senator Clapp—

Senator CLAPP. I am speaking now from the Crow side, of course.

Senator WALSH. You can judge best about what I would do by what I have done.

Senator CLAPP. But you have not held any nontaxable property.

Senator WALSH. Oh, yes; but I had property in lands in the State of Montana that have been producing wells. Since I left, we sold out one of the ranch properties in which I had been interested that has paid us regular dividends for 12 years, running from 6 to 10 per cent, and we sold that land at present prices. Last spring we sold out another ranch property in which I was interested.

Now, here is the way I figure it—

Senator CLAPP. I would not sell a foot of my land if I could hold it without taxation for 20 years.

Senator WALSH. Here is the way I figure it out, Senator Clapp. I have held this land for a matter of 10 years. It has produced a reasonably good revenue during that time, and I have no doubt in the world that if I held it 10 years more it would sell for more than

it would to-day. I think the prices of land in Montana to-day are very high. I have no doubt in the world that there will be a recession and that the wave will come again if I wait for 10 or 15 years more; I have no doubt about that, that the land would sell for more. But I may be dead then. I propose to get something out of it in the meantime. I own some timber land over in the western part of the State. I have been trying to sell this timber land. I want the money; I want to make use of it. If I held it for 10, 15, or 20 years, I have no doubt it would sell for very much more than it would to-day.

Now, you have read that this report says there is destitution; that these Indians are poor; and I told you that they need hospitals; they need food. How can you reason it out, with 7,000 acres of land that is growing nothing at all except native grasses, producing, as I was going to tell you, just 8 cents an acre—8 cents an acre is what the present grazing leases produce on that land. Why, I would be quite willing that you should put a provision in this bill that none of these lands should be appraised for less than \$5 an acre, and 6 per cent on that, or 30 cents an acre, should be put in the Treasury here and let it draw 4 per cent, and you would have 20 cents as against 8. Just put it in the bank and let it stay there and not invest it in any way.

Senator CLAPP. But we will not get to the point of reforming the error in the 8 cents an acre proposition. I do not know whether it can be done.

Senator WALSH. I think everybody agrees—I thing Mr. Meritt will agree—that they are getting an enormous price. You may not know—and that is the reason I call your attention to it, or perhaps you have forgotten—that the price has advanced and advanced, and that stock has advanced to a very high price. It now commands a much better price. It has gone up to—what is it?

Mr. MERITT. Do you mean the total amount received?

Senator WALSH. No; the current leasing; \$180,000, is it not?

Mr. MERITT. I have it here.

Senator WALSH. Now, what I was going to say, Senator Clapp, is that in my judgment that is perhaps enough for that grazing land; but you understand our lands in Montana are now being devoted to agricultural purposes.

Senator CLAPP. Of course.

Senator WALSH. And you know enough about it to know that the land will not produce enough if used merely for grazing purposes that can be cultivated agriculturally, and you would not devote it to grazing exclusively; and so while a man is justified in paying \$5 an acre for it for agricultural purposes, it is not worth any such figure as that for grazing purposes; and therefore I suggest to you that it is an economic crime to let that great body of land lie there, producing nothing whatever except the natural grasses that it will grow.

Mr. MERITT. Senator, our record for the last fiscal year shows that the reservation lands leased contained 1,893,591 acres, with a rental of \$186,150. That covered 29,900 head of cattle and 95,000 head of sheep.

Senator WALSH. One hundred and eighty thousand dollars is the figure that I had in my mind, and that was the result of very spirited bidding. Bids were called for, my recollection is, twice, Mr. Meritt.

The first bids were rejected and it was advertised anew, and this was the best result that could be obtained.

Senator CLAPP. I did not ask the question in a spirit of criticism, with regard to the 8 cents an acre. I was simply inquiring if that could not be changed.

Senator WALSH. And that was the answer I was giving to you, Senator, that the department has done the very best it could, I think, to get the very highest price that anybody would give for these lands for grazing purposes. But it ought not to be devoted to grazing purposes. The land ought to be made into homes for people who will cultivate it, who will establish homes there, raise chickens and hogs and cattle, conduct dairying and all that kind of business, and you would increase the production of the land 10 times. Everybody appreciates that.

So I say that as a proposition of public policy it is not a wise thing. And then bear in mind that you get all of whatever benefits there are by the existing system under the plan proposed, because at least two-thirds of those Indians, as the map would show if we have it here, have their allotments within this triangular area amounting to something over 750,000 acres. That is left undisturbed.

Now, I do not know what the temper of the committee is in relation to the bill.

Senator HUSTING. Perhaps if they are getting only 8 cents an acre for leasing, they are not getting the value of the land, and they may get a larger profit by selling it than by leasing it if they can get \$5 an acre for it.

Senator WALSH. No; I do not think that is the idea that enters into the mind of any one at all. The Indian is a creature of environment and of heredity and of custom, just the same as all of us are. The Indian has never known anything about private individual ownership. He has for generations—for centuries, and perhaps for æons, been accustomed to ownership in common, and particularly the old Indian does not want to be even jarred out of it—"this is our land; this belongs to our tribe." He does not want his land in severalty but so much as he can cultivate and handle himself. He wants the whole thing left as it is.

That is a powerful consideration. Secondly, the lands of the ceded strip are sold, and, as I have shown you, for twice as much as it was contemplated, when the land was opened, it ever would bring. In other words, the Indians have got at least twice for this land what they expected to get for it, and yet every one of these Indians will tell you that he never got a dollar, if you go there and ask him. They do not want to sell any more land, because they never got a dollar for what they did sell. That is what they tell you.

Now, what is the fact about the matter? This land was sold, and the disposition of all the funds was left to the Interior Department—an enormous amount of money. I have not the figures in my mind just now as to what was paid in the construction of this irrigation plant.

Senator OWEN. Do you recall how much it was, Mr. Meritt?

Senator CURTIS. They say \$1,250,000 in the report that was read.

Mr. MERITT. It was more than a million and a quarter dollars, Senator.

Senator WALSH. That was put into this irrigation plant, and it is lying there; and now the report tells you how the area under cultivation is constantly increasing. I showed you that the expense of maintaining that irrigation system is twice, or almost twice, the aggregate of the amount of the agricultural production of the reservation, and so, year by year, the amount of this money to the credit of the Indians in the Treasury is being absorbed for the purpose of making necessary repairs on the reservation.

Senator OWEN. How does it happen that the irrigation project does not pay better?

Senator WALSH. Well, the Indians have never been agriculturists. They have been hunters for buffalo and they do not take to agriculture and they are not supplied with teachers.

Senator OWEN. I thought this was under the supervision of the Indian Office?

Senator WALSH. It is. They are doing the best they can.

Senator HUSTING. Did we not appropriate several hundred thousand dollars again at the last session for irrigation?

Senator WALSH. Now, really, you go back and you will find that in some way or another statesmen and philanthropists all had an idea that that was the solution of the matter—to put the land under cultivation and construct irrigation plants and have the Indians cultivate the lands; but they will not do it. You have to teach them how to do it. In the first place, the Indian is not an industrious, hard-working fellow, and it takes hard work—back-breaking work—to cultivate new land and put it under irrigation, and so it is not being done. Then, in addition to that, the expense of maintenance and the expense of administration on this reservation are great. They have a very poor system of bookkeeping in the Indian Office.

Senator CURTIS. It is all paid out of their fund?

Senator WALSH. It is all paid out of their fund. You can figure it out. It amounts to something like \$105,000 a year to run the reservation, and that is coming out of this money, and so the Indians say, "We never got a dollar from the land that we sold."

Senator OWEN. Would it not be a good idea to pension them?

Senator WALSH. Of course it would. Now, we endeavored, Senators, to meet that condition in this bill. We endeavor to fix it so the Indian will know what he is getting and what is coming to him. The report there tells about the expense of administration and says that if this land is opened after this the expenses of administration will have to be met by appropriation out of the Treasury, whereas now they are met out of the funds of the Indians, while they have this 750,000 acres of land, and they have got 12,000 head of cattle on that 750,000 acres of land, and you can increase that herd easily to 25,000, or if you do not increase it, you can lease out the right to graze the additional 13,000 on that and they will pay you \$2.50 a head at least—I think we might say \$3 a head. You can realize that it would make \$39,000 more for grazing. Why, anybody with any kind of business judgment or business capacity at all can take those 750,000 acres of land and 25,000 head of cattle, or their equivalent, 12,000 head of cattle, and if he can not clear \$100,000 a year he ought to quit.

So I call your attention to the fact that they have got land enough left and cattle enough left so that easily all the expenses of administration can be met out of these resources.

Senator OWEN. What are the objections that the commissioner urges to this matter?

Senator WALSH. Why, Senator, I canvassed the letter of the Secretary here. It recites all of the objections that are urged. I took them up one by one and I answered those objections, and no man has ever come before this committee to question or to controvert in any way, shape, or manner those matters that I adverted to.

For instance, one was that the land on this ceded strip had not yet been disposed of: large areas of that land remained undisposed of. Another was that there are 49,000,000 acres of public land open to entry in the States of Montana and Wyoming. Another was that the treaty was against it, when, as a matter of fact, for 10 years in the deliberations of this committee you never consulted or conferred with nor ever took the judgment of the Indians concerning the opening of the reservation, never since the decision of the case to which Senator Curtis has adverted.

Senator CLAPP. Do you recall at this time, Senator, a case in which we have diminished the reservation where there was an express treaty provision? Now there may have been such cases that had passed our scrutiny.

Senator WALSH. Senator Clapp, I read as part of my remarks when this matter was before us, from the report, or at least an article by Superintendent Valentine, who told of the history of this matter and of the decision of the Supreme Court, and stated that thereafter the department never sought to secure the consent of the Indians to the opening of the reservation.

Senator CLAPP. I think that is probably true, but it has not to my knowledge ever come before the committee.

Senator WALSH. I wish I could find it for you, Senator.

Senator CLAPP. I understand that part, but I do not recall now any case to which the attention of the committee was called in which it was known that there was such an express agreement with any tribe where we have diminished the reservation. If there have been such cases, they were unnoticed and passed without attention being called to the treaty itself.

Senator WALSH. Of course, that may be correct, the department, as well as the committee, taking the view that the matter had been disposed of by this decision of the Supreme Court. I do not mean to say that it was not the subject of discussion here and determination.

Senator CLAPP. It has not arisen in the State that I in part represent, because there is no such provision in their treaties, as I recall.

Senator WALSH. You will find at page 19 of the printed record that I say as follows:

I desire to say in this connection that, although this report bears the signature of Secretary Lane, for whom I entertain a very high respect, it is by all odds so weak in its logic and so erroneous in its statement of the conditions that I can not possibly attribute its authorship to Secretary Lane. The letter continues [reading]:

"For the information of your committee the following brief outline of the legislative history of the Crow Reservation is presented:

"Article II of the treaty, dated May 7, 1868——"

18 OPENING OF THE CROW (MONTANA) INDIAN RESERVATION.

Senator PAGE. That was before the admission of your State into the Union, was it not?

Senator WALSH. Yes, sir; that was in 1868, and we were admitted in 1880 [reading]:

"(15 Stat. L., 649), created a reservation in the then Territory of Montana for the Crow Tribe of Indians, which treaty also contained the following:

"ART. XI. No treaty for the cession of any portion of the reservation herein described, which may be held in common, shall be of any force or validity as against the said Indians unless executed and signed by at least a majority of all the adult male Indians occupying or interested in the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him as provided in Article VI of this treaty."

"This obligation on the part of the Government has heretofore been respected. Several reductions of the original Crow Reservation have heretofore been made, but in each instance the consent of the Indians was first had and obtained. By agreement, dated June 12, 1880, the Crow Indians formally consented to the sale and disposal of a part of their reservation, embracing approximately 1,300,000 acres. This agreement was ratified by the act of April 11, 1882 (22 Stat. L., 42). Similar action was had under agreements with this tribe, ratified by the act of March 3, 1891 (26 Stat. L., 1039), under which they ceded 1,200,000 acres, and by the act of April 27, 1904 (33 Stat. L., 352), under which they agreed to the cession of 1,500,000 acres."

Now, I say—

"Now, the Secretary omits to tell you that in the year 1904 the Supreme Court of the United States decided that an agreement of that character was in no sense binding upon the Congress of the United States, and that since that time all of the reservations have been opened without any respect whatever to the provisions of this treaty and without securing acquiescence in it, and accordingly in 1910 this committee reported a bill through Senator Page for the opening of the Crow Reservation without having gone through the formality of securing the assent of the Indians. I shall refer to Senator Page's report a little later on."

You will recall that that was more than six years ago. Senator Page unanimously reported from this committee a bill favoring the opening of the Crow Reservation.

Senator CURTIS. May I state at this point that the decision to which the Senator refers was simply to the effect that Congress had the power to do that if it thought it was for the best interests of the Indians. The Senator is not just correct in the statement that other reservations or all reservations since that time have been opened up without consent. The Osages consented to the opening of theirs in 1906, and I think it has been the policy to have the consent of the Indians if it could be had unless Congress was convinced that it would be to the best interests of the tribe to open it.

Senator WALSH. Well, I made this statement upon the authority of Mr. Valentine, who was the Commissioner of Indian Affairs preceding Mr. Sells, in a very excellent work by Mr. Leupp, entitled "The Indian and his Problem," and I take the liberty now, with the permission of the committee, to read from the work as to what he says upon that subject. I read from page 81—

Senator PAGE. Is this from Valentine or from Leupp?

Senator WALSH. This is Leupp. Now [reading]:

"Until 1903 the prevalent assumption among our people at large was the same as among the Indians themselves, that the reservations belonged absolutely to the tribes which inhabited them in pursuance of so-called 'treaties' or by authority of presidential proclamations. Although not a few of the treaties contained figurative language designed to convey to the tribes concerned the idea of perpetuity of physical possession, every allotment law, and every moral argument made in behalf of allotment as a remedy for some of the more crying evils of the reservation system, plainly recognized that system as but a passing phase of the history of Indian development, and to such extent discredited the notion of a permanent tribal title. It has often been said to me by ultraconservative old Indians that if they had ever conceived of the changes in store for their people as the result of accepting reservations, they would have died fighting the Government rather than submit to being placed there."

"It is declarations like this which form the basis of much of what we hear and read about the deceptions practiced on the Indians by the Government. I have had a part in the negotiations of one Indian treaty and in the interpretation and explanation of several others, and I am confident that most of the sins of the Government in this respect went to no greater depth than its omission to volunteer to the Indians suggestions which it would never have thought of volunteering in a similar transaction with people of any other race of some of the less obvious consequences which might flow from the business then in hand; that the rest of the trouble has resulted from the limited range of the Indian's mind, due equally to his inherited peculiarities and his narrow environment, but rarely appreciated by the members of treaty-making commissions; and that what has been so sweepingly denounced as a century of dishonor might better be described, as far as the Government's operations are concerned, as an era of mutual misunderstandings."

"Every treaty had to be ratified by an act of Congress before it became of force, and again and again the lawmaking body took what looked to the general public like unwarrantable liberties with vital provisions which had received the approval of the Indians. A notable instance in point occurred in 1901 in an act ratifying an agreement with the Kiowa, Comanche, and Apache Tribes, who occupied a large reservation in Oklahoma. To the ratification was attached an item providing for the allotment of lands in severalty to the members of the occupant tribes and the opening of the unallotted surplus of the reservation to public sale and settlement. Some of the features of this legislation differed so radically from the terms of the original agreement with the Indians that the Indian Rights' Association resolved to make a test case of the question of the authority of Congress in the premises. It brought suit, therefore, in the name of Lone Wolf, a prominent Kiowa, to enjoin the Secretary of the Interior from carrying the law into execution. The case finally reached the Supreme Court of the United States, which not only affirmed the right of Congress to do what it had done, but laid down the general principle that the fee in Indian reservations is vested in the Government; that the Indians have nothing more than a right of occupancy; and that the power of Congress to work its will with such reservations is practically limited only by its own sense of justice in dealing with a weaker and dependent people."

"This broad pronouncement carried dismay to the hearts of many excellent persons whose benevolent interest in the Indians had led them to share the Indian view of unqualified ownership and who could hardly reconcile themselves to the discovery that their long-cherished notion was a delusion. But to one who had been studying the subject in a quite unemotional way it brought no great surprise. Nay, it furnished a key to a problem which had given most of us anxious thought, for it had been intolerable to believe that the highest legislative body in this Republic would go on year after year cutting out essential features of agreements with the Indians entered into with the utmost solemnity of form, substituting therefor provisions never contemplated by the immediate parties to these instruments and forcing the unrecognizable resultant down the throats of the weaker party merely because the latter was too feeble to resent the affront. When the Supreme Court gave to the apparent aggressions of Congress the sanction of legal righteousness it at any rate cleared the air and simplified the future duty of the friends of the Indians."

"From the 5th of January, 1903, the date of Lone Wolf decision, to the present day no more agreements have been made or sought with the Indians preliminary to the opening of a reservation."

That is the authority upon which I made the statement.

Senator CURTIS. Right there, if I may interrupt you, the decision was made after a term of court in 1902, rendered, I think, in January, 1903, but Congress did afterwards negotiate and submit to a vote the Osage treaty of 1906. I think it would be well to read the language of the decision at this point.

Senator OWEN. It is rather a declaration of right than of legal righteousness.

Senator CURTIS. The decision is as follows:

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which

will not only justify the Government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so.

Senator WALSH. In justice to Mr. Leupp, I ought to proceed with the reading from the last hearing:

Senator CURTIS. Let me state what I know to be a fact. I know that the Osage agreement of 1906 was voted on and approved by the Osages before it was submitted to Congress. I do not care what Mr. Leupp says. I know what occurred.

Senator WALSH. I merely read this so that—

Senator CURTIS. But I want to state that because I know it. The agreement with the Kaw Indians in 1902 was voted on by the tribe and submitted by the tribe to Congress, and Congress approved it. After that time the Osages took the same agreement and worked out their own plan and submitted it. Of course, it was afterwards amended in the department and amended in Congress, but the Osages by a majority vote voted to submit the proposition to Congress. I do not care what Mr. Leupp says.

Senator WALSH. Mr. Leupp goes on [reading]:

"But during my administration as commissioner, when a bill looking to such an opening was introduced in Congress and submitted to our department for comment, I always urged the insertion of a clause to provide for sending a special agent to the tribe concerned, to explain the situation; to interpret the pending bill so that the Indians could comprehend its purport; to assure them in my name that under the ruling of our 'highest council of judges' it would be worse than useless for them to try to prevent the opening of their reservation if Congress had decided that it should be opened; and to ask them to discuss the matter soberly among themselves and send me word what they would like omitted, or modified in, or added to the bill as it stood. The message was accompanied with a promise that I would carefully consider their requests, transmit to Congress those which seemed sensible and wise, and use my utmost influence to procure such changes in the measure before it became a law."

And so, gentlemen, when the bill reported by Senator Page, to which I made reference a little while ago, was before this committee, a delegation of the Indians was here and the committee said to the Indians in substance, "We are going to pass a bill and we would like to get it as nearly in conformity with your wishes as we can." Now they said to the Indians, "You meet with Senator Dixon here and let Senator Dixon know just exactly what changes you would like to have in the bill and present them to us and we will consider them." They did so. I do not know whether any changes were made or not—I dare say there were some. Senator Dixon reported them and they were acted upon, and adopted or rejected as the case may be and the bill was reported.

That was the procedure, in accordance with what he says here.

Now the Commissioner of Indian Affairs comes before this committee and asks you not to pass this bill, not to give it your indorsement or approval, because of the provisions of this treaty which forbids that Congress act on this matter without first getting the consent of the Indians. I have told you my conviction, that you would not get the consent of the Indians while this present condition of affairs obtains.

Senator CURTIS. Mr. Chairman I personally dislike very much to oppose a measure that is supported by both of the Senators from the State of Montana, and I am satisfied from what has been stated by Mr. Walsh and the examination I have made of this case, that something ought to be done for these Indians and that the policy that has been followed there would be changed by the department. I do not think there is any question on earth about that. But I do

believe that where the Indians themselves are unanimously opposed to it, where the Commissioner of Indian Affairs is opposed to it, and the Secretary of the Interior, and similarly the Indian Rights Association, who looks after the interest of the Indians, that we ought to hesitate about passing or recommending the opening up the reservation. It seems to me that Senator Walsh should confer with the officers of the Indian Department, and that they ought to be able to work out some plan that would be of benefit to the Indians—a possible plan to open up some of this reservation, but as far as I am personally concerned, I can not vote for a bill where it is opposed by the Indians themselves and by the Secretary and by the commissioner unless I were fully convinced that it was for the best interests of the Indians, and under all the circumstances I have some doubt that it is for the best interests of the Indians.

The CHAIRMAN. Is there any further discussion?

Senator CLAPP. Mr. Chairman, I see a representative of the Indian Office here. It is possible that he may desire to submit a statement.

STATEMENT OF MR. EDGAR B. MERITT, ASSISTANT COMMISSIONER OF INDIAN AFFAIRS.

Mr. MERITT. Mr. Chairman, Commissioner Sells asked me to get out of a sick bed this morning and to come before the committee to express his very strong objection to the passage of the Myers bill for opening the Crow Indian Reservation.

I was before the committee last summer and expressed the views of the office and my own views in detail on this bill, and my testimony is to be found on page 119 of Part II of the hearings. It seems to me that the strongest objection to the passage of the Myers bill for the opening of the Crow Reservation is found in this treaty provision, which says in substance that the Crow Reservation shall not be opened without the consent of the Indians. The Crow Indians have considered the Myers bill. A resolution was passed, I believe, by the Senate submitting this question to the Crow Indians. It was the unanimous opinion of the Crow Indians, expressed without any influence on behalf of the commissioner or the employees of the Indian Bureau, that the Myers bill should not be passed. We concede that Congress has a legal right to open the Crow Reservation, in view of the decision of the Supreme Court of the United States in the Lone Wolf case; but there is a moral question involved here, and that is the question of taking the property of the Crow Indians away from them in the face of their objection, the treaty referred to, and in view of the strongly expressed opposition of the Crow Indians. The Indian Office and Commissioner Sells strongly believe that this bill should not be favorably reported.

I realize that mistakes have been made in the past in the administration and handling of the Crow matters: for example, the construction of this large irrigation project. More than \$1,000,000 have been expended in the construction of this project, but that project was begun 20 years ago, and those now in charge of the Indian affairs should not be held responsible for that condition. The Crow Indians have been decreasing in population during the past few years, so much so that the death rate has been deplorable. However, these conditions are now improving. We are trying very hard now to

teach these Indians industry, and we are impressing upon them the necessity of going to work and making their living by labor, the same as the white man.

Senator CURTIS. Before you conclude with reference to that reservation, may I make a statement and ask you whether or not it is true, or whether or not the opinion I get is correct. I had a letter yesterday from a man named Summers, who said that the Indians were getting 10 cents an acre for that land, and that the department was deducting 50 cents an acre from them and from the money that they earned per acre for irrigation charges. If that is so, you are charging the Indian 40 cents an acre a year more than he is getting for his land.

Mr. MERITT. I do not believe that statement is true, Senator.

Senator CURTIS. I wish you would look it up, because this gentleman has just been upon the reservation. I would read his letter, but I turned it over to Senator Lane yesterday.

Mr. MERITT. We are charging 50 cents an acre for maintaining the irrigation project, but that only applies to land that is actually under cultivation by the Indians. There are about 73,686 acres under the irrigation project and only about 18,000 acres are under cultivation by the Indians.

The irrigation project on the Crow Reservation has been a hopeless failure, so far as business economics is concerned, but it should be borne in mind that we are treating with a people who do not always conform to business principles. It is hoped that within the near future these Indians will make a better use of that irrigation project. I have urged the superintendent to lease that irrigable land for farming purposes so that white farmers can go in there and by making use of that irrigable land, show the Indians by example what can be done. We are at this time leasing, as I stated before, 1,893,531 acres for grazing purposes and we receive an income of \$186,150 from those leases. I stated before the committee that if I were going to write the legislation that would dispose of this land it would be my view that we should allot the entire reservation, divide the land up pro rata, and then if any individual Indian wanted to dispose of his surplus land he might have that privilege, reserving, of course, the minerals and oil, and having a timber reservation, and an area large enough to run the tribal herd. Of course, that is only my personal view of the matter. It has not been passed upon officially by the commissioner or by the department. But the Myers bill, as now worded, is, in the opinion of the commissioner and the Indian Office, entirely against the best interests of the Crow Indians, and is a violation of a solemn treaty entered into with those Indians, and it is the belief of the commissioner and the Indian Office that the bill should not be favorably reported or passed by Congress.

The CHAIRMAN. Is there any further discussion?

Senator OWEN. Mr. Chairman, the difficulty that I see in the way is one of sentiment. We sent this matter back to the Crow Indians to be voted upon by a resolution of the Senate just at the last session, and to have them vote upon it, and to immediately disregard the vote would seem to me to be painfully negligent of our reasonable attitude. If we are going to ask their opinion about it, intending to disregard it absolutely when we get it, I think that is very inconsiderate. I, of course, realize the legal right of the United States

under the Lone Wolf decision, the same kind of legal right that would obtain to abrogate a treaty with any other nation on the face of the globe. You have the legal right to abrogate a treaty with Germany, but we would not be apt to do that if there was any other way to adjust it.

I think that Senator Walsh has made out an economic case, but it is not a question of mere property. The Indian does not look at these things as the white man does. The Indian does not care much for property. He is not disposed to give his time and energies and do back-breaking work for the purpose of accumulating property. He does not care very much about property. He would rather go out in the sunshine and ride around on his horse and enjoy life in his own particular way. We have been trying to persuade him to take the Saxon view and accumulate the property so necessary to his happiness and his advancement. But there is a fundamental difference between the Indian view and the Saxon view. One man intensely desires to accumulate property; the other man is almost indifferent to the accumulation of property. The old Indian conception was that whenever a friend had anything he naturally would be perfectly willing to divide it, and they would be perfectly willing to divide what they have. That has been demonstrated over and over again. They do not have the same selfish view of property.

But here is a case where we submitted this matter to these people for a vote, and they have voted upon it and voted unanimously against it. That does not conclude the matter necessarily. It seems to me that it would be perfectly feasible for the representatives of the State there to take the matter up with the Indian Office and to have the Indian Office deal with the Crows and come to some kind of an agreement with them that would preserve perfectly our attitude of good faith. I should feel very reluctant to disregard the vote which we have just invited.

Senator WALSH. How would you like a resolution instructing the Commissioner of Indian Affairs to begin negotiations with the Indians looking to the preparation—

Senator OWEN. I believe that would be a better way.

Senator CLAPP. Mr. Chairman, it strikes me, while I am very much impressed with Senator Walsh's argument and realize the embarrassment of voting against representatives of a State who have to deal with the problem and are responsible for its outcome—we need only want to develop the Indian along industrial and economic lines—that if there is anything left of our civilization that is worth implanting in anybody else's mind we want to implant it in his mind.

Now, this is the first time that I have ever been called upon to vote to disregard the express terms of a treaty of this kind. I may have voted to open reservations without knowing that there was such a provision in the treaty, but this is the first time that I have ever been called upon to vote where I knew there was such a provision.

The Senate, as Senator Owen has said, has by resolution submitted this matter to these Indians. I realize that there is a great deal of force in the argument of the Senator from Montana (Mr. Walsh) as to why it was easier perhaps to get a negative than an affirmative vote on this proposition from the Indians. But what will be the Indians' concept of our ideals when we submit this matter and have this

report sent back to us and then offhand and deliberately disregard the treaty obligation which we gave some sanction to in submitting this matter to them? It does seem to me it would be better, Senator, if some resolution could be passed to get the cooperation of the department and see if this could not be worked out without a direct violation of this treaty provision.

Senator WALSH. Let me say, Mr. Chairman, in this connection that the bill was introduced by my colleague, who is unfortunately detained by reason of serious illness and probably will not be here before the 1st of January. I had hoped that my colleagues in the Senate and on the committee would yield to what seems to me the obvious interest of the Indians, and in connection with this matter take up this measure and make such amendments as the committee deemed wise and then pass the bill. But in view of the opinions expressed by members of the committee it may be that we ought to proceed along the line suggested by the remarks of Senator Owen and express to the Secretary the view that he ought to take the matter up with the Indians and see if some agreement can not be reached with regard to the matter.

I should like to ask the committee to postpone the further consideration of the matter until my colleague can be present.

The CHAIRMAN. To what date?

Senator WALSH. I was going to ask, if it will be agreeable to the committee, to let it stand over until the first Wednesday in January.

The CHAIRMAN. Is there objection?

Senator OWEN. Our regular meetings are on Thursday.

Senator CLAPP. Why not make it on Thursday and then we are more likely to have a quorum on our regular meeting day.

Senator GROXXA. I have no objection except that some of us may not be able to be here at that time. Would it make any difference if you set a later date than that?

Senator WALSH. Well, of course, as we all know, the 4th of March will come along now very rapidly. If it is satisfactory to the committee I will be glad to say the second Wednesday in January.

Senator GROXXA. I desire to say a word before we adjourn. As Senator Owen has said, Senator Walsh has made out an economic case, but that is based entirely upon the way the affairs of the Indians have been managed in the past, a manner which is entirely faulty. I do not think it is out of place to mention the fact here that I was subjected to a great deal of criticism, and I might say almost unfriendliness, because I opposed the Indian bill a year ago, the bill that failed. I called the attention of the Senate to the fact at that time that these hundreds of thousands, yes, millions, of dollars that have been taken from the Indians' money and invested in reclamation projects was money wasted. We have conclusive proof of that here to-day in the case which has been so ably presented by Senator Walsh. It is an absolute proof and corroboration of the statement I made at that time, that we were taking the Indians' money and expending it for something that is of no use to the Indian, because the Indian was not prepared to farm under these conditions.

I am simply saying that in order to call not only the attention of this committee but of the department to the fact that we ought to exercise care in appropriating these vast sums of money for irriga-

tion projects. The white men have no objection, of course, to that provided it is taken out of the Treasury of the United States; but, as I said at that time, I do object to the taking of the Indians' money for the purpose of building irrigation projects which eventually inure to the benefit of the white man entirely. There is a possibility of changing this system, and I know that the Indian Office has recently been trying to do it. They have been investing the Indians' money in cattle. But they ought to invest more. If you make millionaires by leasing the land to them on that reservation, why not give the Indians that benefit? It is not impossible for the Indian Office or for Congress to allow the Indian Office to buy cattle and invest the money in that way. If the Indians have not the money, take money out of the Treasury and let them buy cattle instead of leasing to those millionaires or those people, whoever they are, for 8 cents an acre, which is nothing, in my judgment. We pay in North Dakota \$1, and as high as \$2, an acre for grazing land, and I know that 8 cents an acre is only a nominal sum, and it is worth more if it is worth anything at all.

Senator LA FOLLETTE. These Indians have something like \$800,000 in the Treasury now, which would provide for establishing a cattle industry there for them, which would make the lands remunerative to them.

Senator GRONNA. Exactly.

Senator LA FOLLETTE. Give them the opportunity to hold them for a raise that will eventually come.

Senator GRONNA. That is right. If you will establish the right standard and base it upon that, then the argument by Senator Walsh, of course, will fall. But I agree with Senator Walsh that if you are going to conduct the business of the Indians in the future as it has been conducted in the past, we had better pass his bill. There is no question about that. I can not, however, at this time vote to report the bill out. I have no objection to postponing action upon it. I think that ought to be done.

The CHAIRMAN. Is there any objection to the request of the Senator from Montana that the bill be postponed until Wednesday, the 10th day of January, 1917, that being the second Wednesday in that month?

Senator CLAPP. Why do you make it Wednesday, when on the next day we will have a regular meeting and would be more apt to have a quorum present?

The CHAIRMAN. Senator, we will be in session every day at that time on the Indian appropriation bill.

Senator WALSH. I make that suggestion because I find that on the regular day there are a great many other things that require the attention of the committee, and I would like to make this a special matter.

Senator CLAPP. Very well; I have no objection.

The CHAIRMAN. Do you want it disposed of on that day, or do you desire further discussion?

Senator WALSH. If my colleague is here I would like to have it disposed of. I may be obliged at that time to ask a little further discussion.

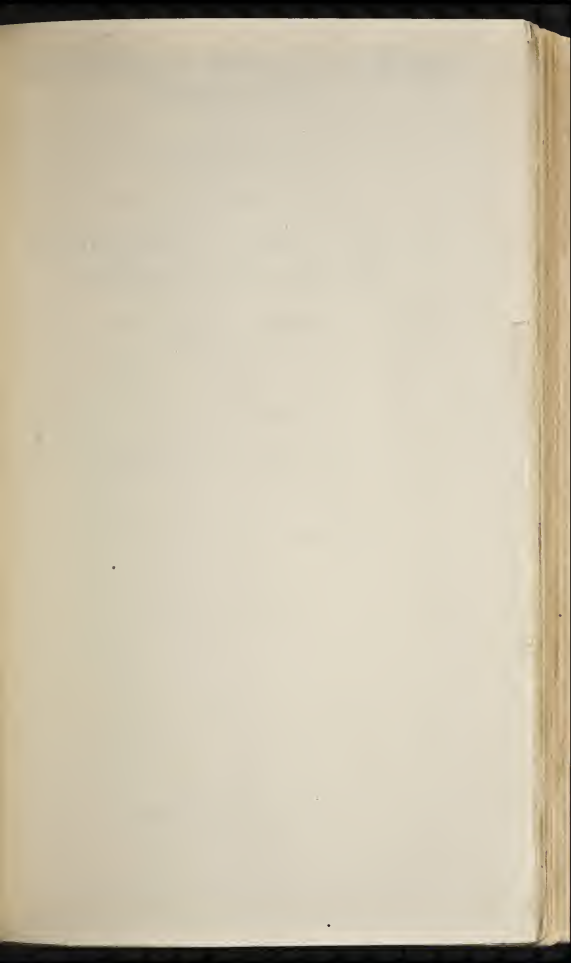
The CHAIRMAN. A vote will be taken on the bill at that time.

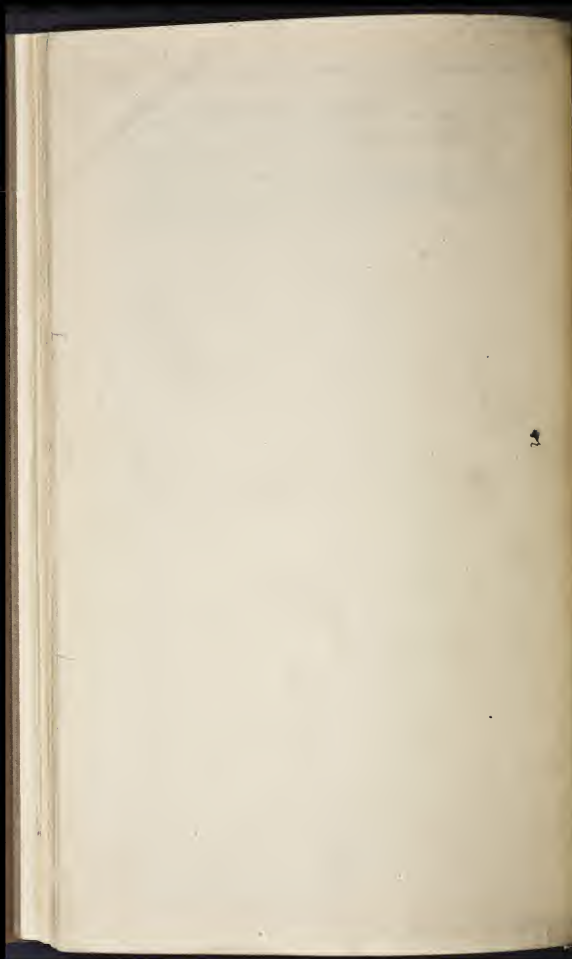
Senator CLAPP. You can not bind the committee to vote on that day.

The CHAIRMAN. Well, we will postpone it to that day for further consideration.

Senator CURTIS. I move that the committee adjourn.

(The motion was agreed to, and the committee adjourned, postponing the consideration of the Crow Indian bill to Wednesday, January 10, 1917, at 10 o'clock a. m.)





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METALLIFEROUS MINERALS ON INDIAN
RESERVATIONS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SIXTY-FOURTH CONGRESS
SECOND SESSION

ON

H. R. 12426

A BILL TO AUTHORIZE MINING FOR METALLIFEROUS
MINERALS ON INDIAN RESERVATIONS

Printed for the use of the Committee on Indian Affairs

DECEMBER 13 AND 16, 1916



WASHINGTON
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1916

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METALLIFEROUS METALS ON INDIAN RESERVATIONS.

WEDNESDAY, DECEMBER 13, 1916.

UNITED STATES SENATE, COMMITTEE ON INDIAN AFFAIRS.

The committee met at 12 o'clock m. in the committee room, Capitol, for the purpose of considering the bill (H. R. 12426) to authorize mining for metalliferous minerals on Indian reservations.

Present: Messrs. Owen, Husting, Walsh, Clapp, La Follette, Fernald, Gronna, Curtis, and Henry F. Ashurst (chairman) presiding.

The CHAIRMAN. Representative Hayden, of Arizona, is present and desires to make a few remarks upon House bill 12426, to authorize mining for metalliferous metals on Indian reservations.

Mr. Hayden, the committee will be glad to hear you.

STATEMENT OF HON. CARL HAYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA.

Mr. HAYDEN. Gentlemen of the committee, I do not desire to detain you any great length of time.

I have before you a bill which I succeeded in passing through the House at the last session of Congress to authorize mining for metalliferous metals on Indian reservations. As introduced it applied particularly to the State of Arizona, but the Department of the Interior was of the opinion that there was so much merit in the measure that it ought to be made applicable to all Indian reservations where metalliferous mining is possible. It is a general bill and therefore will probably require some discussion. I shall be very glad to explain its terms at the convenience of the committee. If you desire it done at this time I shall be glad to do so, but if you prefer to have the matter postponed to another day, I will be glad to conform to the convenience of the committee.

Senator OWEN. Mr. Chairman, I have myself an engagement which I have already deferred for some minutes in view of the fact that we have already held a meeting this morning on the Crow opening, and I very much regret that I can not remain. I would like to hear Mr. Hayden's argument. The general policy of the proposition seems to be entirely sound.

Senator CURTIS. I would like to have it go over until some future time.

The CHAIRMAN. What time does the Senator suggest? I would like to have a special day set, because we do not want Mr. Hayden to come here and have to wait.

Senator OWEN. I think it had better be done promptly if there is expectation of having action upon the bill.

Mr. HAYDEN. I could come to-morrow.

The CHAIRMAN. Will that be convenient to the committee or would it be better to set Saturday?

Senator CURTIS. I could come Saturday.

Senator CLAPP. I move that we hear Mr. Hayden on Saturday. I make that motion in order to have it in proper form.

(The motion was agreed to.)

Senator CLAPP. I move that the committee adjourn.

(The motion was agreed to, and the committee adjourned until Saturday, December 16, 1917, at 10.30 o'clock a. m.)

DECEMBER 16, 1916.

The committee met at 10.30 o'clock a. m. pursuant to adjournment.

Present: Senators Pittman, Owen, Fernald, Gronna, Curtis, and Ashurst (chairman), presiding.

The CHAIRMAN. The committee will come to order. Mr. Hayden, you may proceed with your statement.

STATEMENT OF HON. CARL HAYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA—Resumed.

Senator GRONNA. Mr. Hayden, before you proceed with your statement may I make this suggestion: I apprehend that it would incur the enmity of the Indians to go on to their reservation. They consider that it is their land and their property, and to permit the white man to go on there without any restrictions whatever to mine, it seems to me, might have a tendency to make them hostile to our people. As I understand it there is a provision in the bill—section 2—which provides that while we make this law it must meet with the approval of the Secretary of the Interior first. In other words, the law is of no effect until he shall designate the reservation or the particular land where these explorations may be made. Is that true?

Mr. HAYDEN. Yes, sir.

The CHAIRMAN. That is section 2.

Senator GRONNA. And another question that I want to ask is this: There may be cases in which the Indians may sustain a loss. Is there any provision in your bill for reimbursement or providing for payment to the Indians for any loss they may sustain?

Senator CURTIS. Or damages?

Senator GRONNA. I mean damages.

Mr. HAYDEN. No individual Indian could suffer any damage because mining operations are confined to the unallotted land.

Senator GRONNA. But there might be damage to them collectively.

The CHAIRMAN. For what?

Senator GRONNA. For any work that may be done by the miners. We always provide in the homestead bills that the prospectors may be allowed to go on to lands that are designated as coal lands and where the settlers have taken homesteads. We always provide that the homesteader shall be reimbursed for any damage that may be done to them by these prospectors. Now, it seems to me it would only be fair that the Indians collectively should be reimbursed for any damages that were done.

Mr. HAYDEN. Under the theory of this bill the prospector goes into the Indian country and locates a mining claim, the same as he would on the public domain, by filing his location notice in accordance with the mining laws, and also filing a copy of the same with the superintendent of the reservation. He has one year in which to apply for a lease. If he does not apply for a lease within one year his location is void. If he acquires a lease he must then pay a rental for the use of the land—25 cents, 50 cents, and \$1 an acre, etc.—and must do his assessment work as required under the mineral-land law. Having paid for the use of the land, which is unallotted land, it is hard for me to conceive why he should not use it, and how there could be any damage to the tribe collectively.

Senator GRONNA. It can be changed in this way: As I understand the law, the prospector or miner is permitted to take timber, any amount of timber that is necessary for him to carry on his operations. Now, I take it if there is timber, or if there should happen to be timber close by the mine, the miner would be allowed to take the timber free, and certainly the Indians ought to be paid for that timber.

Mr. HAYDEN. Yes.

Senator CURTIS. Out in your country there may be another proposition. They might have a very valuable spring that is supplying water for the Indians' sheep or cattle, and they might take that spring and take that spring and deprive the Indians of water.

Mr. HAYDEN. There is a provision in the 640-acre grazing homestead bill which covers that situation, and it might be well to use similar language in this bill.

Senator GRONNA. I have no objection to the general provisions of the bill, but I desire, in so far as I can, to protect the interests of the Indians.

Mr. HAYDEN. I have provided in the next to the last section of this bill the following:

That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations not inconsistent with this act as may be necessary and proper for the protection of the interests of the Indians, and for the purpose of carrying the provisions of this act into full force and effect.

Now, whether that would be broad enough that when a man applied for a lease the Secretary, under that authority could say, "You must agree in this lease that you will not do damage to the Indians," or not, I do not know. It might be so construed, but there is a general provision for the surface entry of coal lands or other lands where the mineral is reserved to the United States, that the miner is compelled to compensate the homesteader for any damage done to him.

Senator CURTIS. There is a provision in the Osage act that any damage done in locating mineral, oil, gas, or other minerals shall pay to the member of the tribe any damage that may accrue on account of the putting in or operation of the well.

Mr. HAYDEN. You understand that this bill does not apply to lands belonging to individual Indians. Allotted lands are not subject to location at all.

Senator CURTIS. I know, but it belongs to the tribe, and I think you could add a provision to section 9:

That in addition to the payment of royalties and rentals as herein provided the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States.

You might add:

And in addition thereto shall pay to any member of any tribe, or to the tribe any damage that may occur to the tribe or to the individual member thereof by reason of the location of such mine or claim—

Whatever you call it.

Mr. HAYDEN. I should be very glad, Senator, if we could find that provision in the Osage act. I shall also look for the provision in the public-land laws relating to mining where surface entries have been made. I do not believe there will be any difficulty in agreeing upon a proper amendment.

Senator PITTMAN. I would like to call attention to section 5 of this bill, on page 3. The section is as follows:

SEC. 5. That the Secretary of the Interior, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided*, That the said Secretary, during the life of the lease, is hereby authorized to issue such permits for encroachments herein provided to be reserved.

Mr. HAYDEN. That section is taken bodily from section 24 of the general leasing bill applying to coal, oil, gas, etc.

Senator PITTMAN. That section places it entirely within the power of the Secretary of the Interior to provide against taking timber off the land, because he can reserve the surface of the land, or the surface of this mining claim, so to speak, except where it is not necessary for the use of the lessee in extracting the mineral.

Senator CURTIS. The point I made a moment ago is this, that in some sections of that country the Indians depend upon some springs not located on their selections. Now, what if those mining people should make a selection of 80 acres, and include a spring that had been supplying water for these Indians for the cattle, they taking all the water for mining purposes and depriving them of the use of it? I think the Indians would be very materially damaged by the locations made in that way, especially in a country where water is the main thing for the maintenance of small herds.

Senator PITTMAN. I believe, under section 5 the Secretary of the Interior would have a right to reserve that spring.

Senator GROSS. Of course, the water holes are of more value even than timber. It is almost like gold in some countries.

Senator PITTMAN. Of course, the intention of this bill is apparent. It is simply to permit, under the leasing system, the development of minerals, and that is all. They have followed the mining law, in so far as the marking out of it is concerned, and simply getting something definite in the amount of mineral.

Mr. HAYDEN. If the committee prefer, I shall be glad to go through the bill briefly, explaining its terms section by section, and stating where I obtained the language that is used, if that is agreeable to you gentlemen.

The first section of the bill is taken bodily from section 1 of House bill 408, the water-power bill now pending before the Senate. You will remember that in the last Congress and in this Congress, after extended hearings and after much debate, the House passed and sent to the Senate bills authorizing the establishment of a leasing system governing water power on the public domain, and for the mining of coal, oil, gas, potassium, sodium, and other minerals. As a member of the Public Lands Committee of the House I am familiar with these so-called conservation bills, and I will say that while there is much opposition in the country to the establishment of a leasing system on the public domain, I ascertained that never had Indian land been opened to mining under any other than the leasing system. While there may be a doubt in the minds of some people as to whether the minerals in the lands should have been given to the Indians, title has now passed to them under the Executive orders or treaties creating these reservations. The mineral lands are their property, and it is not the policy of Congress to dispose of the fee in such property at any time. It has never been done on any Indian reservation under any kind of a mining law. Therefore, we must adopt the leasing system.

Now if the leasing system, based on the best thought of the House in at least two Congresses, was satisfactory to water power and coal, oil, gas, etc., on the public domain, it seemed to me that we might take applicable provisions out of these two bills and make a bill applying to metalliferous minerals on Indian reservations. So I took the first section, as I say, from the water-power bill, which is merely a declaratory statement that certain lands may be leased.

The second section of the bill as originally drawn provided that all unallotted lands on Indian reservations should be open to prospecting. On the suggestion of the Department of the Interior that section was amended to the effect that only those unallotted lands should be opened to the prospector which the Secretary of the Interior might designate, in order to avoid the objection pointed out by Senator Gronna.

The remainder of the section I drew myself, and it is an application of the ordinary mining laws. We do not want to confuse the prospector. He is accustomed to going into the country and filing mining locations under the mining law. He knows how to do that; and if he follows the same system as is now provided under the mining laws, there will be no confusion about it. He will be permitted to enter unallotted lands designated by the Secretary of the Interior and locate his claim. He will file his location notice in the office of the county recorder in the usual way. In addition thereto, he is required to file a duplicate copy of it with the superintendent of the reservation in order that the authorities of the Indian Service may have notice.

The CHAIRMAN. I think that is very good.

Mr. HAYDEN. That gives him the right within one year from the date of filing the location notice to make application for a lease. If he does not apply for a lease within one year, his location is void and he acquires no rights at all.

Senator PITTMAN. That one year will give him time to see whether it is worth leasing or not, I imagine.

Mr. HAYDEN. And time to make his application, have it sent here to Washington and see if it is approved, and all that. I wanted to allow him ample time to satisfy himself, if he so desired, and for the department to take action on his application if made.

Senator PITTMAN. And they would have to send out and investigate it?

Mr. HAYDEN. Section 3—

Senator PITTMAN. One second, before we pass that. Do you understand that under section 2 the unallotted land must first be designated by the Secretary?

Mr. HAYDEN. Yes, sir.

Senator PITTMAN. The reason I wanted to know that is that if that section means that, then it also places it within the power of the Secretary to withhold from the operation of this bill any land upon which there is any spring, or any land which has a peculiar value beside in any other way, either timber or anything else. In other words, the Secretary must first designate the land that is subject to prospecting?

Mr. HAYDEN. Yes. This act is absolutely inoperative until the Secretary takes that positive action after its passage. It says that certain areas of any reservation, if in his judgment it may be proper, may be opened to prospecting.

Senator PITTMAN. What do you think of that, Senator Curtis? If the lands must first be classified and designated before being subject to prospecting, would not that put it within the power of the Secretary to withhold from prospecting any lands that had springs on it, or lands of any other peculiar value?

Senator CURTIS. I think it would. I think the language may be broadened a little bit so as to make it cover springs, or anything of that kind.

Senator PITTMAN. That is the intent of the language.

Senator CURTIS. If you will pardon me for going back, here is the provision I have reference to:

When any oil, coal, asphalt, or other mineral is hereafter opened on lands allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land, and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the lessee or party operating the same before operations begin.

Of course this is individual, but the language could be broadened to make it include the tribe, and you might very easily insert a section there to protect the interests of the Indians and simply add that the Secretary of the Interior is authorized to provide rules and regulations for carrying out the provisions of this section.

Senator PITTMAN. There is a general clause at the end of the bill that authorizes and directs the Secretary to make rules and regulations—

not inconsistent with this act as it may be necessary and proper for the protection of the interests of the Indians and for the purpose of carrying the provisions of this act into full force and effect.

That might refer back to anything that you put in prior to it.

The CHAIRMAN. Would the bill be satisfactory to you, Mr. Hayden, with the amendment suggested by Senator Curtis?

Mr. HAYDEN. Yes, sir.

The CHAIRMAN. Are there any further remarks? Mr. Brossins, do you want to be heard?

Mr. BROSSINS. On this bill, Mr. Chairman; yes, sir.

Senator CURTIS. Mr. Chairman, I have not had time to read this report as yet, and before I pass any judgment on it I want to read it; and I may desire to ask some more questions with regard to it, if the chairman will excuse me at this time and proceed with the hearing.

Mr. HAYDEN. If you prefer, I can sketch through the bill briefly, as I started out to do, explaining it and showing where the language came from. The second section we discussed.

Senator PITTMAN. The second section is taken from the general leasing bill, is it not?

Mr. HAYDEN. No; the first part of the second section comes from an amendment suggested by the Department of the Interior. The latter part is an adaptation of the general mining law. The third section comes from the general leasing bill—from section 12 of that bill—except that as originally introduced in the House the term of the lease in this bill was 50 years, the same as is provided in the water-power bill. We thoroughly discussed the length of the term of the lease when we had the water-power bill up in the House, it being considered a business of some magnitude, in which large amounts of capital were likely to be invested, and also as a business entailing some risk. However, it was the judgment of the House that the term of the lease as provided in this bill should be reduced to 30 years, with the preferential right in the lessee, as provided in all of the other conservation bills, of renewal for successive periods of 10 years. A 30-year period, it seems to me, is short enough. If a miner makes a location he must not only have time to develop the mine but time to raise capital with which to develop it. I know of many mining prospects, as you also know, Senator, that have been held for 10, 15, or even 40 years, until this late date, when money has been more available or it has been possible by the construction of railroads to make the property accessible, before any profits were made. So it does not mean that if a lease is made that there will necessarily be a paying mine within the following year. Therefore it was agreed that 30 years was a fair term for a mining lease.

Senator CURTIS. Following that up with section 9, I had not noticed that 50-year provision; I had not gotten that far. I had read to section 9 and was trying to find some place to suggest an amendment. With regard to this section 9, which requires that not less than \$100 a year in the development of a mining claim shall be expended, is that sufficient to protect the interests of the Indians? I do not know anything about minerals, and that is why I ask the question. It may sound foolish to you people.

Senator PITTMAN. I do not think it would if taken in connection with section 8. Section 8 requires a flat rental, you see.

Senator CURTIS. I have not read that.

Senator PITTMAN. It provides for—

an annual rental, payable at the date of such lease and annually thereafter on the area covered by such lease, at the rate of 25 cents per acre for the first calendar year thereafter; 50 cents per acre for the second, third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

The CHAIRMAN. That would make a drone get to work.

Senator CURTIS. Would that be sufficient?

The CHAIRMAN. I think so.

Senator PITTMAN. They have adopted that provision in the Alaskan coal-leasing bill, and they have put it in the general leasing bill. That subject was discussed very fully as to what would be a reasonable flat rental in addition to royalties.

Mr. HAYDEN. This term has been reduced from 50 years to 30 years.

Senator CURTIS. Well, that is long enough.

Senator PITTMAN. Then, there is another proposition, and that is that this contains a provision similar to our ordinary mining laws out there—that is, that the property shall be operated with diligence.

Senator CURTIS. What have they held in your country as a reasonable length of time for forfeiture under that? What do they hold as a reasonable length of time? As to the oil proposition, they hold a year in a number of cases that I happened to look up; that if the parties fail for a year it was virtually an abandonment. What have they held in mining?

Senator PITTMAN. I do not know of cases in mining where they have ever permitted a cessation of operations in our State—that is, of metal mining—for that length of time. There have been disputes, where they have ceased to operate for 30 or 60 days, and under any circumstances, when we used the words "shall be operated with diligence and in a minerlike manner," they must make a showing to the courts and get an excuse for the cessation in an action brought to forfeit the lease.

Senator CURTIS. The court takes in all the circumstances and conditions of the case.

Senator PITTMAN. Yes; and there might be the condition of a spring and there might be a condition of cessation of transportation that they have been counting on. It may be impossible to get acids to take the stuff out of the ore with. In those cases it comes right down to a question of equity in the court. It is purely an equity case. The action is brought by the owner of the mining company to cancel the lease on the ground of failure to comply with the terms of the lease—that is a forfeiture. One of the terms if every lease granted to private individuals out there is that the property shall be operated with due diligence and in a minerlike manner.

Mr. HAYDEN. As the Senator from Nevada has stated, in the Alaskan coal-leasing bill, and in the general leasing bill relating to coal, oil, phosphate, potassium, and sodium, there is a provision that there shall be a flat rental paid per acre. But I thought in addition to a rental that there should be this requirement of \$100 worth of work a year to insure development. It is for this reason that a miner is expected to do his annual assessment work. So we have put in here more than is required under the other conservation bills.

Now, the fourth section provides that there may be leased not exceeding 80 acres of land, in addition to the areas used for mining, for camp sites, milling, smelting, refining works, etc. That is taken bodily from section 20 of the general leasing bill.

The fifth section—

Senator GRONNA. Just one moment. That is a very important section. That might permit the taking of water power, water holes, and springs, if I read it correctly. It provides:

SEC. 4. That in addition to areas of mineral land to be included in leases under this act the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, a tract of unoccupied land, not exceeding eighty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

That would, as Senator Curtis said a moment ago, at least empower the Secretary of the Interior to lease any water power, or would let them take any spring or any water hole that might be on this particular land. That, of course, might deprive the Indians entirely, and would deprive them of the use of it.

Mr. HAYDEN. On the other hand, if a man has a mining claim on a steep mountainside, where it is impossible to locate a mill, he must have some place on which he can put the machinery to crush the rock and reduce it to a state where it can be smelted or prepared for shipment. It is, therefore, necessary that some provision be made for the ground on which to do that work. Otherwise the mining claim would be useless to anyone. If you have ever been in a rough, mountainous country, where mining is carried on, you will understand that it is impossible in a good many cases to do any milling or smelting on the ground where the ore is produced. It has to be carried elsewhere. We often see tramways, and sometimes narrow-gauge railroads, so that the ore may be moved to a place where it can be treated.

As I say, that provision occurs in the general leasing bill, and I took it bodily from that bill. It seems to me that it is necessary to have such a provision. But we can take into consideration Senator Curtis's suggestion elsewhere in the bill, substantially directing the Secretary to protect the water holes or other rights of the Indians. Even as the bill now reads it is within his discretion, you understand.

Section 4 provides:

That in addition to areas of mineral land to be included in leases under this act the Secretary of the Interior, in his discretion, may grant, etc.

In his discretion he may lease additional areas for mill sites, etc., but it is possible that where a man has a claim on flat land that he would not need a mill site, and then the Secretary would not have to exercise his discretion.

Section 5 has been discussed by Senator Pittman with respect to reserving the surface where it is not necessary for the use of the lessee for the purpose of mining. I think it is perfectly proper that that should be done. Very often the Indians might obtain considerable revenue from this source. For instance, if a mining camp grew up the Secretary could lease the surface for business purposes, residences, etc. That would bring the Indians in quite an income, and there is no reason why they should not have it. That is often done by mining companies that own private property.

Section 6 binds any successor in interest or assignee of the lessee to the terms of the lease. That is taken word for word from section 4 of the water-power bill (H. R. 408) as reported to the Senate.

Section 7 was taken from section 12 of the water-power bill, and there is an almost identical provision in section 26 of the general leasing bill. This section reads as follows:

SEC. 7. That any lease granted under this act may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some parts thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this act or with such conditions not inconsistent herewith as may be specifically recited in the lease.

That is the method of forfeiting a lease and is self-explanatory.

Section 8 is the royalty section, providing that a royalty, which shall not be less than 5 per cent, shall be charged, and that until there is a production of values there shall be a rental of 25 cents an acre for the first calendar year thereafter and 50 cents per year for the second, third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, "except that such rental for any year shall be credited against the royalties as they accrue for that year." That provision, as I have just stated, was taken from section 16 of the general leasing bill.

Mr. BROSSIUS. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BROSSIUS. It is provided in section 8, that has just been read, that the royalty shall not be less than 5 per cent of gross value. That, as I understand it, is in the discretion of the Secretary of the Interior. The point I make is that at first reading you might think it could not be less than 5 per cent, and that is Mr. Hayden's idea, but here it is in the discretion of the Secretary, as I understand the language.

The CHAIRMAN. Suppose we strike out the words "in the discretion of the Secretary of the Interior," and say "shall not be less than five per centum." Then the Secretary should have authority to increase the amount.

Mr. HAYDEN. I think that follows. The bill as originally introduced provided for a flat rate, but it was amended in the House by Mr. Stafford by inserting the words "in the discretion of the Secretary of the Interior." I believe there is merit in what Mr. Brossius has said. That phrase should be stricken out.

Senator GRONNA. Beginning with the word "privilege"?

Mr. HAYDEN. No; the words "in the discretion of the Secretary of the Interior."

The CHAIRMAN. Those words will be stricken out, without objection.

Mr. HAYDEN. Section 9 provides that in addition to the payment of the royalties and rentals the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States.

Section 10—

The CHAIRMAN. Is an inquisitorial power.

Mr. HAYDEN. It is taken directly from section 11 of the water-power bill and authorizes the Secretary of the Interior to look into

the books of the lessees so that it can be ascertained whether they are paying what they ought to pay.

Section 11 provides that moneys received from royalties and rentals shall be deposited in the Treasury to the credit of the Indians, subject to such disposition as Congress may make. That is in the usual form.

Section 12 is taken without change from section 13 of the general leasing bill, except that the Secretary of the Interior is given additional authority to protect the interests of the Indians. It provides that the Secretary is authorized to make rules and regulations to carry out this act, and a proviso is added—

that nothing in this act shall be construed or held to affect the right of the State or other local authority to exercise any rights which they may have to levy and collect taxes on improvements, output of mines, or other rights, property, or assets of any lessee.

Senator CURTIS. But you give them no authority to take land.

Mr. HAYDEN. No. Section 13 was inserted at the request of the Hon. C. D. Carter, of Oklahoma, and is to the effect that this act should not apply to the Five Civilized Tribes or the Osages because there are no metalliferous minerals in that country, and he was afraid it might conflict with the laws relating to coal or other minerals.

Now, there is one other suggestion that has been made by Mr. Brossius that seems to have merit in it. I am personally acquainted with a number of Indians in Arizona, graduates of our Indian schools, and some of them graduates of Carlisle, who have come to me at different times, saying, "We know of places on our reservation that mining could be carried on, and we would like to have the right to mine." I have taken the matter up with the Indian Office and they say; "No; you are an Indian and can not mine on your own land or anywhere else; you can not get a mining claim."

It is Mr. Brossius's idea that if possible there should be inserted in this bill a provision as follows:

Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to mine and manage their own affairs shall be given authority to mine; and also all Indians whom the Secretary of the Interior may authorize to make filings on mineral lands under this act in accordance with the rules and regulations to be prescribed by him.

This is a rather difficult matter to handle, for the reason that there are incompetent Indians, Indians that the department does not trust to handle their own property, even a little agricultural allotment, and there would be no advantage in giving that kind of an Indian the right to acquire property which he could dispose of as he sees fit. But there ought to be, on the other hand, some inducement held out to progressive Indians, who are competent to do their own business, to take a mining claim on their own reservation, at least. I have been trying to prepare some language that I thought would cover that point.

Mr. BROSSIUS. Mr. Chairman, we found in the Indian hearings, or at least the department has found, that competent Indians, when they become quite competent, do not wish certificates of competency to be declared citizens, because they are sharp enough to see that they will then be subject to taxation.

The CHAIRMAN. They would not be required to be declared competent as citizens.

Mr. BROSSIUS. No; but the point is that here would be an inducement to ask for a competency certificate, if they can get the right to mine.

The CHAIRMAN. The question is, Shall the Indians who may be declared competent, and who also take advantage of this act, carry on metalliferous mining?

Senator OWEN. I think they ought to be, whether they are competent or not competent. Why should not an incompetent Indian ask for the right to mine?

Mr. HAYDEN. For the same reason that a white child who is 12 years of age should not be given the right to locate a mining claim on the public domain. They are both incompetent.

Senator GRONNA. I have found during the hearings since I have been on this committee that we have had hearings on this subject that nearly all of these Indians are incompetent, men with just as much business ability as any man on this committee.

Senator OWEN. I do not see why they should not apply for that right.

Senator GRONNA. As I say, they are men of just as much business ability as any man on this committee, and yet I notice they are not declared by law to be competent, while they are in reality competent.

Senator OWEN. It is very hard to get competency declared in the Indian Office. I know people who are perfectly white and reasonably well educated who have been denied competency by the Indian Office.

Senator GRONNA. My idea is that every Indian ought to have the right and preference in the right of mining.

Senator OWEN. I think so, too. There is one suggestion that I would like to make in connection with this matter, and that is that probably some very well-known mines are already unknown on these properties. It seems to me that it should not be merely a race of diligence for a preferential right, but that those that are already known should be open to bidding. Would not that be right? Is there any reason why that should not be done?

Senator GRONNA. I think that is right. It is the Indians' property.

Senator OWEN. Is there any reason to be suggested against that proposition? I think diligence should be encouraged, but where it is well known that there are available mining properties it seems to me those Indians who have property that is known should not be subjected to a race of diligence as between those who have already applied for it, where the shrewdest and sharpest fellow will come in and take advantage of them.

Mr. HAYDEN. Would it be your idea, Senator, to have the Secretary of the Interior designate certain known mineral areas and have that particular land opened by bidding?

Senator OWEN. I would suggest that he make it known; that those properties that are already known to be of mineral value might be designated by any person and then subject to being let. But subsequent to that time I think diligence is all right.

Mr. HAYDEN. I know of but one case of that kind in my State, and that was brought to my attention by an Indian. He said that he knew of a place where there was what they called an *antigua*. That is, that years ago the old Spaniards had worked *arrastras* in getting

out some gold, and he wanted the right to work the place. He could not get permission under existing law because he was an Indian. No white man could go in there, either. It was simply tied up. From what he said it is a small free gold vein where he could do mining in a very simple way.

Senator GRONNA. I would like to call attention to the fact that it might be well to protect the Indians' interest and not allow the water holes and springs and water power to be taken without compensation.

Senator OWEN. I think that is quite right. I think it would be right to safeguard that.

Mr. HAYDEN. The suggestion that Mr. Brossius made about this matter, authorizing the Indians to locate mining claims and obtain leases, appeals to me and to him, just as it does to Senator Owen, on first thought, but I do not see exactly what you are going to have as an outcome if you allow every Indian on every reservation to go out and make locations everywhere and acquire the right to property which he can dispose of without any kind of a restriction at all.

Senator CURTIS. That can be covered very easily by saying that members of the Indian tribes may be permitted, or are hereby permitted, to make selections under the rules and regulations prescribed by the Secretary of the Interior, and in those rules you could provide that the Indians who were incompetent to handle their own affairs might make these selections, and then provide the manner in which they should be developed. If an Indian knows of a valuable mine he ought to have at least some benefit from it and not give it to somebody else, and where the Indian is competent the Secretary should provide that he could go ahead and be permitted to mine and do with his property as he pleased.

Mr. HAYDEN. You and Mr. Brossius are practically in accord. Mr. Brossius proposes dividing the Indians into two classes—the Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs and do the same as a white man—

Senator CURTIS. Yes; just as they buy a horse or a cow.

Mr. HAYDEN. And also all other Indians whom the Secretary of the Interior may authorize to make filings on mineral lands under this act in accordance with the rules and regulations to be prescribed by him. They are divided into two classes in that way.

Mr. BROSSIUS. The first class not subject to the Secretary's orders, the same as citizens of the United States. They are to be divided according to ability, but I think that might be extended according to the Senator's suggestion.

Mr. HAYDEN. Your ideas are fundamentally the same.

Senator CURTIS. I know of one Indian—I do not know what he has got—who came here to Washington a number of years ago and said he knew of very valuable coal land on their reservation and went on to describe what it was. The mineral laws did not apply and he would not tell anyone else. He said he did not intend to tell them until that land was opened up and he was going to try to get it for himself; if it was subject to rental that an Indian ought to have the right to rent that property.

Senator PITTMAN. Coal is not included in this bill.

Senator CURTIS. No; but I am using that to illustrate the matter. If it is opened up in his country he ought to have the right to it if he found it years ago. If he is able to do so and can do so, he ought to be permitted to go on it and develop it when it is opened.

Senator PITTMAN. The Indians, some of them, are quite skillful prospectors.

Senator CURTIS. They claim that in Utah they had quite a number of Indians who were very adept in discovering minerals.

Mr. HAYDEN. I do not think it is the desire of anybody to prevent the development of any mining property.

Senator CURTIS. Why could you not, following the suggestions that have been made here, prepare the two or three amendments that have been suggested and submit them with your bill, and when there are a sufficient number of the members of the committee present we can pass upon them—probably at the meeting on Monday, Mr. Chairman, could we not?

The CHAIRMAN. We could appoint a subcommittee to cooperate with Mr. Hayden and get it drafted this afternoon. When we proceed to the consideration of the Indian appropriation bill it is difficult to interrupt the course of that bill.

Mr. HAYDEN. I shall be very glad to render any assistance that I can in that regard, Mr. Chairman.

The CHAIRMAN. Suppose you and Senator Curtis and Senator Gronna get together as a committee to consider the bill.

Senator CURTIS. I would rather somebody else should serve on the committee and let me look at it afterwards. I have many pressing engagements this afternoon.

Senator GRONNA. Suppose you appoint Senator Pittman on the committee, as he is very well versed in mining laws.

The CHAIRMAN. Very well; you can prepare it and submit it to Senator Curtis, Senator Pittman, and Senator Fernald.

Senator GRONNA. I would be glad to act, but Senator Pittman is more capable than I.

The CHAIRMAN. You may prepare several copies of the amendments that are suggested.

Senator PITTMAN. I think that will be a good idea. There should be made a memorandum of the points that you want to cover.

Mr. HAYDEN. I think so. One is the question of protecting the water holes—

Senator CURTIS. And damages of all kinds.

Mr. HAYDEN. Yes; damages generally.

Senator GRONNA. And water power.

Senator CURTIS. I move that the committee now adjourn.
(The bill as reported to the Senate is as follows:)

[Omit the part struck through and insert the part printed in *italic*.]

AN ACT To authorize mining for metalliferous minerals on Indian reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him and under such terms and conditions as he may prescribe, not inconsistent with the terms of this act, to lease to citizens of the United States or to any association of such persons or to any corporation organized under the laws of the United States or of any State or Territory thereof, any part of the

unallotted lands within any Indian reservation heretofore withdrawn from entry under the mining laws for the purpose of mining for deposits of gold, silver, copper, and other valuable metalliferous minerals, which leases shall be irrevocable, except as herein provided, but which may be declared null and void upon breach of any of their terms.

SEC. 2. That after the passage and approval of this act unallotted lands within Indian reservations heretofore withheld from disposition under the mining laws may be declared by the Secretary of the Interior to be subject to exploration for and discovery of deposits of gold, silver, copper, and other valuable metalliferous minerals by citizens of the United States, and after such declaration mining claims may be located by such citizens in the same manner as mining claims are located under the mining laws of the United States: *Provided, That the locators of all such mining claims, or their heirs, successors, or assigns, shall have a preference right to apply to the Secretary of the Interior for a lease, under the terms and conditions of this act, within one year after the date of the location of any mining claim, and any such locator who shall fail to apply for a lease within one year from the date of location shall forfeit all rights to such mining claim: Provided further, That duplicate copies of the location notice shall be filed within sixty days with the superintendent in charge of the reservation on which the mining claim is located, and that application for a lease under this act may be filed with such superintendent for transmission through official channels to the Secretary of the Interior: And provided further, That lands containing springs, water holes, or other bodies of water needed or used by the Indians for watering live stock, irrigation, or water-power purposes shall not be designated by the Secretary of the Interior as subject to entry under this act.*

SEC. 3. That leases under this act shall be for a period of thirty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods: *Provided, That the lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease and upon acceptance thereof be thereby relieved of all future obligations under said lease.*

SEC. 4. That in addition to areas of mineral land to be included in leases under this act the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, a tract of unoccupied land, not exceeding eighty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

SEC. 5. That the Secretary of the Interior, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided, That the said Secretary, during the life of the lease, is hereby authorized to issue such permits for easements herein provided to be reserved.*

SEC. 6. That any successor in interest or assignee of any lease granted under this act, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the approval under which such rights are held and also subject to all the provisions and conditions of this act to the same extent as though such successor or assign were the original lessee hereunder.

SEC. 7. That any lease granted under this act may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some part thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this act or with such conditions not inconsistent herewith as may be specifically recited in the lease.

SEC. 8. That for the privilege of mining or extracting the mineral deposits in the ground covered by the lease the lessee shall pay to the United States, for the benefit of the Indians, a royalty which, ~~in the discretion of the Secretary of the Interior,~~ shall not be less than five per centum of the gross value of the output of the minerals at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine, and an annual rental, payable at the date of such lease and annually thereafter

on the area covered by such lease, at the rate of 25 cents per acre for the first calendar year thereafter; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

SEC. 9. That in addition to the payment of the royalties and rentals as herein provided the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States. *Provided, That the lessee shall also agree to pay all damages occasioned by reason of his mining operations to the land or allotment of any Indian or to the crops or improvements thereon: And provided further, That no timber shall be cut upon the reservation by the lessee except after first obtaining a permit from the superintendent of the reservation and upon payment of the fair value thereof.*

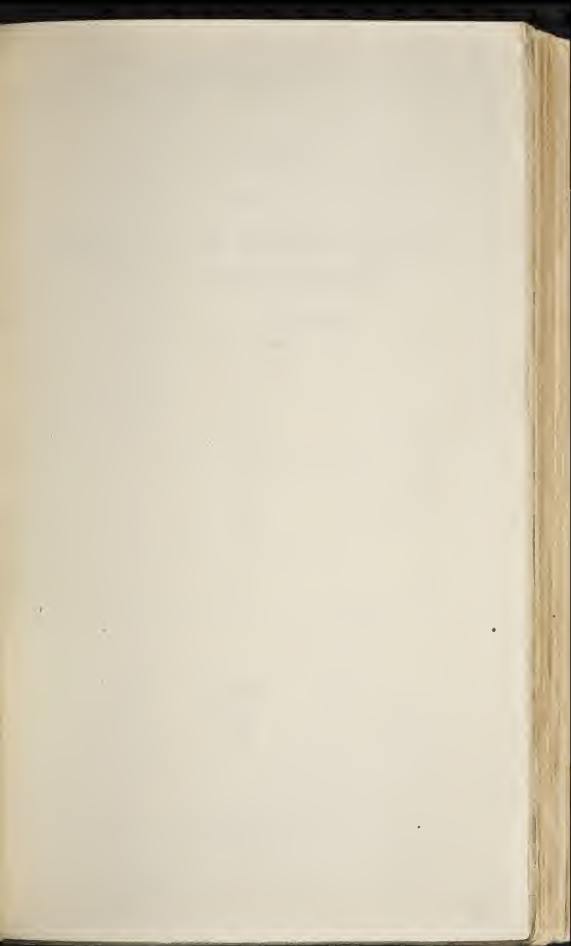
SEC. 10. That the Secretary of the Interior is hereby authorized to examine the books and accounts of lessees and to require them to submit statements, representations, or reports, including information as to cost of mining, all of which statements, representations, or reports so required shall be upon oath, unless otherwise specified, and in such form and upon such blanks as the Secretary of the Interior may require; and any person making any false statement, representation, or report under oath shall be subject to punishment as for perjury.

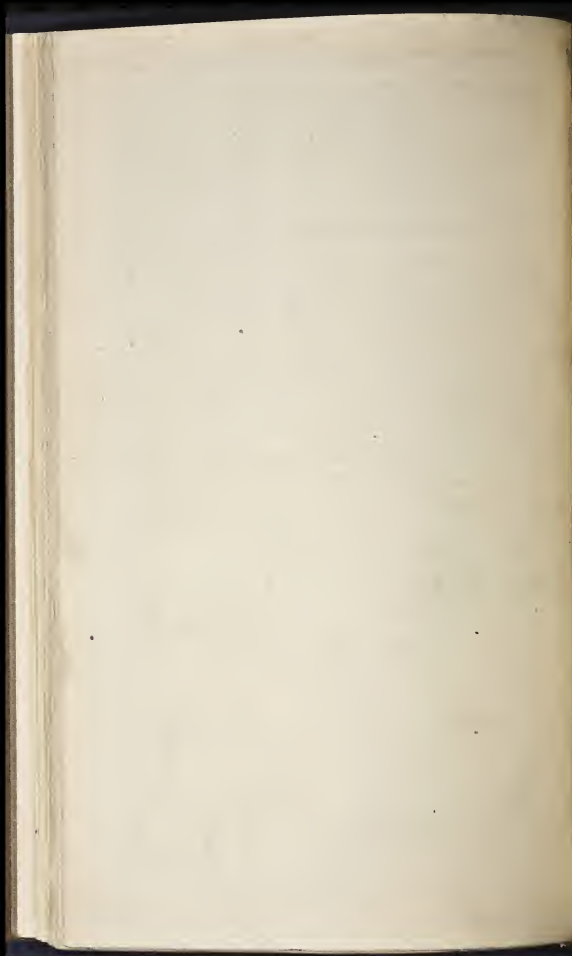
SEC. 11. That all moneys received from royalties and rentals under the provisions of this act shall be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the reservation where the leased land is located, which moneys shall be at all times subject to appropriation by Congress for their education, support, and civilization.

SEC. 12. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations not inconsistent with this act as may be necessary and proper for the production of the interests of the Indians and for the purpose of carrying the provisions of this act into full force and effect: *Provided, That nothing in this act shall be construed or held to effect the right of the State or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee.*

SEC. 13. *That mining locations, under the terms of this act, may be made on unallotted lands within Indian reservations by Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs; and the said Secretary is hereby authorized and empowered to lease such lands to such Indians in accordance with the provisions of this act: Provided, That the Secretary of the Interior be, and he is hereby, authorized to permit other Indians to make locations and obtain leases under the provisions of this act, under such rules and regulations as he may prescribe in regard to the working, developing, disposition, and selling of the products, and the disposition of the proceeds thereof of any such mine by such Indians.*

SEC. 14. That the provisions of this act shall not apply to the Five Civilized Tribes and Osage Nation of Indians in Oklahoma.





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RELIEF OF OSAGE INDIANS IN OKLAHOMA

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

SECOND SESSION

ON

S. 7027

FOR THE RELIEF OF THE OSAGE INDIANS
IN OKLAHOMA

JANUARY 13 AND 26, 1917

Printed for the use of the Committee on Indian Affairs



WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

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HARRY LANE, Oregon.

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RELIEF OF OSAGE INDIANS IN OKLAHOMA.

SATURDAY, JANUARY 13, 1917.

UNITED STATES SENATE, COMMITTEE ON INDIAN AFFAIRS, Washington, D. C.

The committee met at 10.30 o'clock a. m., Hon. Henry F. Ashurst (chairman) presiding.

Present: Senators Myers, Lane, Johnson, Clapp, Gronna, and Fernald.

RELIEF OF OSAGE INDIANS, OKLAHOMA.

Senator LANE. I would like to make an amendment to the bill (S. 7027) which I introduced permitting the Osages to present their claims for damages done them in the sale of the oil and gas leases. I desire certain language to be stricken out of it and I want to have action on it also.

The CHAIRMAN. You want to report the bill, Senator?

Senator LANE. Yes.

The CHAIRMAN. The bill is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States, to consider and determine the claims of the Osage Indians residing on the Osage Indian Reservation, in the State of Oklahoma, against the United States, to recover losses sustained in leasing oil lands on the Osage Indian Reservation, in the State of Oklahoma; and also any legal or equitable defenses, set-offs, or counterclaims which the United States may have against the said nation or tribe of Osage Indians, and to enter judgment thereon, all claims and defenses to be considered without regard to lapse of time; and the final judgment and satisfaction thereof shall be a full settlement of all claims whatsoever of said Indians against the United States, in so far as such claims have been considered by the said courts.

SEC. 2. That suits under this act shall be begun by the filing of a petition, to be verified by an attorney or attorneys selected by the claimant Indians, with the approval of the Committee on Indian Affairs of the United States Senate. The claimant Indians shall be parties plaintiff and the United States party defendant, and such suits shall, on motion of either party, be advanced on the docket of the Court of Claims and of the Supreme Court of the United States. The compensation to be paid the attorney for the claimant Indians shall be determined by the Court of Claims and shall be paid out of any sum or sums found and adjudged to be due said Indians. The balance of any such judgment shall be placed in the Treasury of the United States to the credit of the Indians entitled thereto and draw interest at the rate of four per centum per annum, which interest shall be paid to said Indians or expended for their benefit.

Senator CLAPP. There is one expression there that might limit the application of the act when it came to the final judgment. It does not go into the merits of the bill. In line 6, of page 1, it says "to

consider and determine the claims of the Osage Indians residing on the Osage Indian Reservation." With those words in, it might be held, if the judgment was recovered, that the judgment should only be distributed to those Indians residing on the Osage Reservation.

Senator LANE. Yes. I move that that be stricken out—the words "residing on the Osage Indian Reservation," in line 6, page 1.

The CHAIRMAN. Is there any objection?

(There was no objection.)

The CHAIRMAN. Let that be stricken out.

Senator CLAPP. I move that Senator Lane be authorized to report the bill favorably with that amendment.

Senator FERNALD. I second the motion.

The CHAIRMAN. I will say that the Secretary of the Interior has sent us a report on this bill, which says, in conclusion, "I recommend that the bill do not pass."

Senator LANE. I do not know why the Secretary of the Interior should object.

The CHAIRMAN. I think that the committee is entitled to know that the Secretary has stated that the bill should not be passed. I think that ought to be stated.

Senator CLAPP. I do not know that these Indians have a claim for a single dollar. They are our wards, and if they have any claim that a court of our own creation says they are entitled to it does seem to me that the guardian ought always to be willing that the ward go to court, especially when the guardian himself creates that court. I say this without intending any criticism upon the Department of the Interior.

Mr. MERITT. Mr. Chairman, may the adverse report of the Secretary of the Interior be included in the record?

The CHAIRMAN. Is there objection to that?

(There was no objection.)

The CHAIRMAN. Senator Lane, will you make the report?

Senator LANE. I will.

The CHAIRMAN. You will not try to put it on the Indian bill?

Senator LANE. No.

Senator CLAPP. I will say for the record that I have not read the Secretary's letter. If it deals with details of the bill which need correcting, that will be another matter.

(The letter referred to is here printed in full as follows:)

DEPARTMENT OF THE INTERIOR.
Washington, December 29, 1916.

HON. HENRY F. ASHURST,

Chairman Committee on Indian Affairs,

United States Senate.

MY DEAR SENATOR: I beg to acknowledge receipt of your letter of December 6, 1916, asking for my opinion upon Senate bill 7027, the purpose of which is to confer jurisdiction upon the Court of Claims, with the right of appeal to the Supreme Court of the United States, to consider and determine the claims of the Osage Indians residing in the Osage Indian Reservation, Okla., against the United States to recover losses sustained in leasing oil lands on said reservation.

I know of no claim of the Osage Indians against the United States of the nature indicated except the representations made by certain of the mixed-blood element and intermarried citizens that if this department and the Osage tribal

council had handled the leasing of their lands in a different manner a greater revenue might have been obtained for the tribe.

The situation with respect to leasing their lands is, in brief, as follows:

On March 16, 1896, the Osage Tribe, through its council acting under the general provision contained in section 3 of the act of February 8, 1891 (26 Stat. L., 794-795), made an oil and gas lease to Edwin B. Foster for a period of 10 years covering the entire reservation of about 1,500,000 acres. Under this lease the lessee was given the privilege of renewal for a term of 10 years. The lease provided for a royalty of 10 per cent on oil and \$50 per annum for each gas well utilized. The lease was subsequently assigned to and became the property of the Indian Territory Illuminating Oil Co. in 1902 and that company subleased portions of the lands in large and small areas to about 150 different sublessees, the illuminating company in most cases retaining the gas rights and subleasing only the oil rights at a royalty in advance of that which it paid to the tribe. The Indian appropriation bill approved on March 3, 1905, (33 Stat. L., 1048-1061), contained a provision which renewed and extended for a period of 10 years from March 16, 1906, the so-called Foster lease and all subleases thereof executed on or before December 31, 1904. The area of the lease was reduced to 680,000 acres in the aggregate and the royalty on gas was increased to \$100 per annum on each gas well utilized, and it was provided that the President should determine the amount of royalty on oil, which was fixed at 12½ per cent.

The act of June 28, 1906 (34 Stat. L., 539), provides for the allotment of lands and division of the funds of the Osage Tribe of Indians. Section 3, page 543, reserves to the tribe as a whole all mineral rights in the lands for a period which will expire on April 8, 1931, unless otherwise provided by Congress, and provides that leases for oil, gas, and other mineral "may be made by the Osage Tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe," and that the royalties to be paid to the Osage Tribe under any such lease shall be determined by the President of the United States. It was under this law that the regulations of August 26, 1915, were promulgated and new leases were made to take the place of those which expired by limitation on March 16, 1916.

Under the law the Osage lands may not be leased without the approval of the Secretary of the Interior and then only in accordance with the regulations by him prescribed.

In view of the developed condition of some of the lands included in the Foster lease it became necessary to provide regulations to govern the leasing of the lands for oil and gas mining purposes to take effect upon the expiration of the Foster lease. During 1913, 1914, and the early part of 1915 the matter was thoroughly investigated by me, and conferences were held both with the oil and gas men interested and the Osage Tribal Council. On June 17, 1915, the Osage Tribal Council passed a resolution containing recommendations as to the manner in which new leases should be made. Thereafter, on August 26, 1915, I promulgated regulations to govern the leasing of these and other lands in the Osage Reservation. Several copies of the council's resolution and also of the regulations are inclosed for your further information.

From the following comparative statement it will be seen that the Osage Tribe of Indians will receive considerably more revenue under the new leases than they received under the Foster lease. The old lease covered 680,000 acres, whereas there were made direct to sublessees new oil leases covering about 188,213 acres and leases were sold at auction on 17,400 acres, making a total of 205,973 acres, of which 120,000 acres is subject to a rental of \$1 per acre per year until wells are drilled, leaving about 280,000 acres out of the 680,000 acres of the old lease to be leased for oil in the future. New gas leases have been made to cover about 900,000 acres, a little more than that formerly covered by the Foster lease. Under the old oil lease the tribe received one-eighth royalty, but did not receive any rentals on undeveloped lands. The tribe will receive under new oil leases one-sixth royalty from each quarter-section unit producing less than 100 barrels per well per day, and one-fifth royalty from such units producing 100 barrels or more per well per day, also a rental of \$1 per acre on each quarter-section—160 acres—of undeveloped lands.

Furthermore, the tribe has received \$2,057,600 as a result of the sale of leases on April 20, 1916, and has received from the sale held on June 20 approximately \$1,175,520, or a total of \$3,233,120; these amounts being in addi-

tion to the stipulated royalties heretofore mentioned. The properties which were sold were those producing tracts where the wells averaged over 25 barrels per well and producing lands in excess of 4,800 acres held by former sublessees. The tribe received \$100 per year for each gas well in service on the old lease, and the amount realized last year aggregated about \$12,000. As a result of the execution of the new gas leases the tribe will receive a minimum royalty of 3 cents per thousand feet measured at or near the wells, which should amount, during the first year, to at least \$700,000.

In this connection I desire to invite the attention of your committee to the hearings before the Committee on Indian Affairs, United States Senate, Sixty-fourth Congress, first session, on Senate concurrent resolution 4, relating to disposition of units of lands in the Osage Reservation in the State of Oklahoma, in which will be found a full and complete discussion of the Osage leasing situation, and my report of January 17, 1916, reviewing the matter in detail. The facts upon which is based the alleged claim referred to in Senate bill 7027 were fully considered by the committee, and it is a significant fact that no action was taken by your committee.

In my opinion there is absolutely no foundation on which could be based a claim of the nature indicated, dealing as it does with a matter within the discretion of an administrative officer of the United States Government, upon which point the courts have repeatedly held that they may not interfere. I therefore recommend that the bill be not passed.

Cordially, yours,

FRANKLIN K. LANE, *Secretary*.

RELIEF OF CROW INDIANS.

Senator LANE. I would like, also, permission to report a bill identical, except using the words "the Crow Indians for losses sustained by them through laches."

The CHAIRMAN. Have you the bill on the calendar?

Senator LANE. No; I am going to introduce that.

The CHAIRMAN. Introduce it to-day, and we will take it up Monday.

Senator LANE. I will try to.

(Thereupon the committee adjourned until Monday, January 15, 1917, at 10.30 a. m.)

RELIEF OF OSAGE INDIANS IN OKLAHOMA.

FRIDAY, JANUARY 26, 1917.

UNITED STATES SENATE, COMMITTEE ON INDIAN AFFAIRS, *Washington, D. C.*

The committee met at 10 o'clock a. m., Senator Henry F. Ashurst (chairman) presiding.

Present: Senators Myers, Lane, Walsh, Clapp, Gronna, and Curtis.

The CHAIRMAN. Senators, Mr. Towne, who represents some of the Osage matters, would like to be heard for a few moments. Is there any objection?

STATEMENT OF MR. CHARLES A. TOWNE.

Mr. TOWNE. Mr. Chairman and members of the committee, you will recall that two or three days ago I asked your attention to the wish of the Osage Nation and of the tribal council and of the Legislature of Oklahoma, expressed in a concurrent resolution on the subject, that the tribal council, now composed of an exceptionally experienced and intelligent body of men, be permitted to come here and give a general statement of all the matters affecting the interests of that tribe, which are now impending, and to present questions of the utmost gravity, and which seem at this stage to invite something like a systematic and comprehensive treatment.

The disposition of this council is not a contentious one or one which finds a present expression in any divergence of opinion from the policy of the Government, but one which is grounded upon the comprehension of the interests and the needs of that people, and embraces subjects of such far-reaching importance that it seems they ought to be considered at first hand.

They are perfectly aware, gentlemen, that it is impracticable at this stage and at this session of Congress to get systematic and complete treatment of all these matters of legislation. There are, however, certain amendments to the appropriation bill that have been reserved in accordance with an arrangement with your committee some days ago by the Commissioner of Indian Affairs, upon which they may well be heard, respecting legislation at this session: then it is apprehended that the hearings would afford the basis for the development between the interval of the adjournment of this Congress and the assembling of the next for the preparation of some intelligent program upon which Congress might act fully and comprehensively at its next session.

The chairman of your committee has handed me this telegram, which I will read at his suggestion. It is as follows:

PAWBUKA, OKLA., January 22, 1917.

Senator HENRY F. ASHURST.

United States Senate, Washington, D. C.:

Oklahoma Legislature passed concurrent resolution along lines of Osage resolution of January 10 asking that Osage Council be accorded a hearing in Washington.

ELMER WHEELER,
CLEMENT DENOYA,
CHAS. BROWN,
HARRY BAYLES,
FRANCIS REYARD,
ANTHONY CARLTON,
Members of Osage Council.
GEO. E. TINKER,
Secretary.

It seems to me, gentlemen, that is a request which may well be granted by this committee.

The CHAIRMAN. Do you want this memorial in support of this request to go into the record?

Mr. TOWNE. I think so. It is not intended to be an exhaustive memorandum, but merely one indicative of the general purpose of the committee.

(The paper referred to is here printed in full, as follows:)

MEMORANDUM IN SUPPORT OF REQUEST THAT THE TRIBAL COUNCIL OF THE OSAGE INDIANS BE PERMITTED TO COME TO WASHINGTON AND TO BE HEARD BEFORE THE COMMITTEES ON INDIAN AFFAIRS.

I. On January 10, 1917, the tribal council passed a series of resolutions referring to various matters affecting the interests of the tribe and asking the respective Committees on Indian Affairs of the two Houses of Congress to call the tribal council before them for a hearing on these matters. Copies of these resolutions have been mailed to members of the committees.

II. On January 18, 1917, the two branches of the Legislature of the State of Oklahoma passed a concurrent resolution memorializing Congress in behalf of summoning the tribal council to Washington for the purpose stated above.

III. It is common knowledge that the situation of the members of the Osage Tribe is peculiar and of importance. Their accession to citizenship, and the allotment of their lands in severalty while retaining until 1931 the mineral content thereof as tribal property, although the royalties on the production therefrom are payable to members of the tribe individually, the subsequent growth of oil and gas development to enormous proportions, the certainty that this development will continue, and at an even vastly greater rate, are the main reasons why a considerable number of questions have arisen incidentally to the management of the affairs of the tribe which, in the opinion both of the tribal council and of the members of the tribe are of such magnitude in themselves, so vitally of interest to the tribe and its members and so important to the people and the Government of the United States, that it is of the highest public concern that the tribal council be given an opportunity to be heard before the appropriate committees of Congress to the end that, first, the facts in relation to these matters, and, secondly, the wishes and opinions of the Osage people regarding them, may be authoritatively produced both to assist Congress in deciding upon certain proposals for action at the present session and to serve as the basis of comprehensive and intelligent legislation at the next session of Congress.

IV. The interest of the Osages in the matters pressing for proper attention is shown by the facts that (1) A tribal committee has been chosen at a mass meeting of the tribe for the purpose of bringing these matters more prominently to the attention of the public; and (2) a tribal council was elected at the last election composed of men of most exceptional qualifications for considering the subjects under inquiry and advising Congress thereon, comprising

as it does, men of wide business experience in the practical conduct of large enterprises, such as stock raising, banking, manufacturing, and mercantile pursuits.

Respectfully,

W. M. DIAL,

Member of Osage Tribal Committee.

OSAGE COUNCIL RESOLUTION.

Whereas the Osage Tribal Council is elected for the purpose of looking after the affairs of the Osage Tribe of Indians; and

Whereas J. George Wright, superintendent of schools, or Indian agent, at the Osage Indian Agency, Pawhuska, Okla., is also charged with the duty of cooperating with the Osage Tribal Council in looking after the affairs of the Osages; and

Whereas Mr. J. George Wright, acting Indian agent for the Osage Indian Agency, has been away from the Osage Indian Agency a large part of the time since he was appointed to said office, and has not been in close touch with the Osage people, and has not cooperated with the Osage Tribal Council nor with the Osage people in advancing their best interests, but is seemingly satisfied to hold aloof from and to ignore the wishes of the Osage Tribal Council and of the Osage people; and

Whereas it is the belief of a large part of the Osage people that said J. George Wright, acting Indian agent for the Osages, is more greatly concerned about and is more favorable to the interests of big oil companies and men of large financial means and political influence than he is to the interests of the Osage people; and

Whereas the attitude assumed by Mr. J. George Wright, acting agent for the Osages, and the manner of his conduct of the Osage Indian Agency is unsatisfactory and objectionable, and renders his usefulness as an Indian agent, or Government official, practically at an end; and

Whereas the United States Indian agent for the Osages at all times should be in close touch and in sympathy with Osage affairs and the Osage people, and having the fullest confidence of said people in order that the best results might be obtained by the Osages in educational, moral, social, and financial affairs; and

Whereas many matters of pressing financial character have been and are being presented to the Osage Tribal Council for consideration, and during the consideration of the questions presented there is no assistance afforded the Osage Tribal Council or to the Osage people and no cooperation afforded by the acting Indian agent for the Osages, Mr. J. George Wright; and

Whereas the Osage Indian Agency, including the Osage boarding school, is being run at great cost to the Osages, and the present Osage Tribal Council and former Osage Tribal Councils have repeatedly asked for an itemized statement of the cost of running the Osage Agency and School, and the detailed account of the manner in which our moneys are expended, and in every case the request of the Osage Tribal Council in this matter has not been complied with; and

Whereas there are many matters of vast importance to the Osages pending before the Congress of the United States, and before the Department of the Interior, and the Osage Tribal Council a short time ago requested the honorable Secretary of the Interior to call the Osage Tribal Council to the city of Washington for the purpose of giving the council the opportunity to present divers matters to the Interior Department and to the committees of Congress; and

Whereas the request in the matter of being called to the city of Washington was refused by the honorable Secretary of the Interior; and

Whereas matters of importance to be presented to the Interior Department and to the committees of Congress for consideration perhaps should be specifically referred to, and we hereby enumerate the same as follows:

First. The extension of the period of the tribal or communal ownership of the minerals of the Osage Indian Reservation.

Second. The leasing of the unleased portion of the Osage Indian Reservation for oil and gas, or for other minerals.

Third. The adoption of new regulations or modifying the present regulations for leasing oil and gas lands in order to secure the greatest benefit to the Osage people.

Fourth. Inquiry or congressional investigation into the matter of conducting the Osage Indian Agency, with the object of reducing all unnecessary costs and eliminating all extravagance, and obtaining the best results for the Osage people.

Fifth. Inquiry into the conduct and cost of the Osage Indian boarding school, and consideration of the question as to whether the same should be discontinued, or, if continued, as to the period of time and the character of school and the manner of conducting the same.

Sixth. Consideration of the law relative to the homestead selection of Osage allottees, and providing for the better safeguarding of such homesteads, and providing that Osage homesteads descend to Osage heirs, and to remain inalienable and nontaxable for a further period of years.

Seventh. Change of the present regulations relative to mineral leases, or enforcing the same to the end that Osage allottees be secured in the possession and use of their homesteads, and that oil companies be restrained and prevented as much as possible from going upon the homesteads of Osage allottees in the prosecution of their oil and gas business, and that wherever it is deemed to be the best interests of the Osage people to permit oil and gas operators to go upon homesteads of Osage allottees, and the same is greatly injured or destroyed thereby; that the money damages that are exacted of oil and gas operators be used in securing a new homestead, or a part of a new homestead, and the same be made a part of a new homestead for such an allottee, and the same be made inalienable and nontaxable as other Osage homestead selections.

Eighth. That the Department of the Interior be required to pay all bonus money from oil and gas leases to the members of the Osage Tribe of Indians, the same as oil royalties and other moneys are paid, and as has been done in the past.

Ninth. Presentation to the committees of Congress and through them to the Congress of the United States of the claims of the Osage Tribe of Indians in what is known as the Osage civilization fund, a claim that has repeatedly been presented to the Congress of the United States for its consideration for the last 25 or 30 years; a consideration of the question as to whether said claim shall be allowed to the Osages at this time, or wait until the contract of Kappler and Merrillatt, attorneys, expires; and in this connection it is often suggested that since Oklahoma has a complement of eight Congressmen and two United States Senators, our interests are safer in their hands than in the hands of attorneys like Kappler and Merrillatt.

Tenth. Changing or providing regulations for the sale of Osage oil royalties upon the most advantageous terms, and at an advance over posted market price of the Standard Oil and subsidiary purchasing companies.

Eleventh. Inquiry into and investigating the conducting of all the oil and gas business of the Osage Indian Reservation, and a careful checking up of all the production of oil and gas and the whole matter of its distribution.

Twelfth. Consideration of the question of guardianships over the estates and persons of Osage allottees, as to whether or not it would be advisable to do away with the present system of guardianships and have some officer or officers of the United States to act in such capacity for the purpose of reducing to a minimum the great cost that attaches to the same, and to minimize the confusion that exists in such matters under the present system and the laws that are in force.

Thirteenth. Consideration of the question as to whether acting Indian agent, Mr. J. George Wright, should be continued as such officer or some one more acceptable to the Osage people, and therefore of greater usefulness, be substituted in his stead; and

Whereas the above enumerated items conclusively shows the necessity for representation by the Osage Tribe of Indians at the city of Washington before the Congress of the United States; and

Whereas vast sums of Osage money have been and are being expended under the direction of the Department of the Interior without regard to the views of the Osage people, and the cost of paying the expenses of the Osage Tribal Council and a per diem during the attendance of the council before congressional committees and before the Department of the Interior is so small a matter as compared to the great good that might result therefrom; and

Whereas since the honorable Secretary of the Interior has refused the request of the Osage Tribal Council to call the members thereof to the city of Washington, nothing remains for said tribal council to do but to request the honorable Indian Committees of both the United States Senate and the House of Representatives by resolution or otherwise to call the Osage tribal council before said committee for the purpose of presenting claims and the wishes of the Osage people in regard to legislation that is pending or proposed legislation that is desired; and

Whereas the Oklahoma Delegates in the Senate and the House of Representatives are deeply interested in the welfare of the Osage people and are in a position to be of great benefit to the Osage Tribe of Indians if the matters above set out could be presented to them for consideration; and

Whereas the honorable Committee of Indian Affairs of both the Senate and House of Representatives are especially charged with looking into affairs of this character, and doing all they can to afford relief where it is necessary to the different tribes of Indians of the United States: Therefore be it

Resolved, by the Osage Tribal Council in session assembled this 10th day of January, 1917, that the Committee on Indian Affairs of the United States Senate and the Committee on Indian Affairs in the House of Representatives be hereby requested to call the Osage Tribal Council before said committees for the purpose of presenting any and all matters of interest to said committee for consideration; That the expenses and per diem be paid to said Osage Tribal Council out of any Osage moneys that might be available.

Be it further resolved, That a copy of this resolution be sent at once to the chairman of the Senate Committee on Indian Affairs, the chairman of the Committee on Indian Affairs of the House of Representatives, and to each member of the committee, and to each Member of the United States Senate and Members of Congress from Oklahoma.

(Signed) PAUL RED EAGLE,
Assistant Chief, Acting Principal Chief.

GEO. E. TINKER,
Secretary.

JOE BATES, Interpreter.

Senator GRONNA. Has this matter been taken up with the department?

Mr. TOWNE. Senator, I will say this: I tried to see the Secretary of the Interior some days ago, after this matter was first suggested here, and he was out of the city. Then I saw the Commissioner of Indian Affairs, after a talk with Mr. Meritt, and had a short interview with him, and he agreed to see the Secretary of the Interior at his earliest opportunity. He thought to-day would be the first chance he might have to see him. So far as I know that is the situation there, Senator.

Senator GRONNA. So you are not in position to know whether the department is opposed to it. When I say the department, I mean—

Mr. TOWNE. No; I have received no information on the subject.

Senator GRONNA. I am asking that question because if the department is willing to let these Indians come of course there is no need of taking any further action.

Mr. TOWNE. I understand, Senator Gronna, a little while ago a request by the council to come was declined by the department, and in my interview with the Commissioner of Indian Affairs a couple of days ago he spoke very indulgently and amiably on the subject, but said he did not desire whatever inference I might draw from his attitude to be taken as an indication of the answer to my request at all, neither as a denial nor acquiescence in the suggestion, but said he would confer with the Secretary.

If you will bear with the suggestion, gentlemen, it seemed to me that an indication of the pleasure of the committee, if the committee thinks that it would be a good thing to have the council come up here, might with propriety be submitted to the Secretary of the Interior.

Senator GRONNA. Speaking only for myself, I think in anything the Indians wish, especially on a matter of as great importance as this, that we ought to grant them the right to have their business done in their own way.

Mr. TOWNE. I will say, Senator, on that point that I have been pretty busy during the last two or three days in looking into this situation, which was before that only vaguely known to me, and I am bound to say that I believe the Osage situation generally has got to be undertaken by Congress in a spirit of broad, comprehensive, fundamental consideration, and I think the dignity of this tribal council, as now constituted, and the vastness of the interests involved merit a first-hand hearing as a basis of that kind of consideration by Congress, and I believe that it is a just thing that they ask and a wise public action.

The CHAIRMAN. Are we ready on the Crow matter?

Mr. TOWNE. I should like, if the committee will make a request to the Secretary of the Interior, that the tribal council be summoned.

The CHAIRMAN. What is the pleasure of the committee on that subject?

Senator CLAPP. Mr. Chairman, I hardly would think, offhand, that the proper thing to do would be for us to ask the Secretary to summon the council. I think if any action is taken by the committee, the more proper way would be for the committee to invite the council. However, that is simply somewhat of an offhand view of mine at this time.

Senator WALSH. Mr. Chairman, I have a very decided view about this matter. I hate very much to take the attitude that I must assume about this, but I do not see how I can take any other position with respect to the matter.

These people have come here and asked for a hearing; they want to come here and be heard. I intimated the other day that before we could act upon any application of ours we ought to know what the matters are in respect to which they desire to be heard. Now, we have got an enormous amount of work before us. All of us are here at considerable sacrifice this morning, in view of the many demands that are made upon our time. We can not sit here and listen generally to complaints about things on the Osage Indian Reservation. If there is any legislation which they want and which we can possibly pass, or probably pass at this current session of the Congress, I should like to hear them about it. If, on the other hand, it is a matter of complaint or criticism in a general way about the administration of affairs upon an Indian reservation or something that is not of an urgent character and needing immediate attention, why we are bound to put it off until some more convenient season.

I suppose probably the memorandum that is before us was left here in response to a suggestion I made along that line, and I have gone over this memorandum and I see nothing in it; there is not a thing, as far as the memorandum is concerned, from which you can

learn what it is they want to talk to us about. Everything is contained in paragraph 3. Paragraph 1 recites the resolution; paragraph 2 sets forth the resolution of the Oklahoma Legislature, and paragraph 3 tells in a general way that the Osage Indians have large interests and valuable oil discoveries have been made, and they want to talk generally about those matters.

I certainly must vote against inviting them here, because if they are invited here I shall feel it urgent upon my part to come and hear what they have got to say, and I can not possibly take the time to come here and listen to a general discussion of Osage Indian affairs that have not any reference to any particular legislation.

Mr. TOWNE. If I may be heard a moment. I will say to Senator Walsh that there are two objects which this request presents. The one is to be heard definitely and certainly upon at least three proposed amendments to the pending Indian appropriation bill.

Senator WALSH. I think it is strange that those matters were not set forth in the memorandum before us.

Mr. TOWNE. The supposition was, if you will bear with me, that the Senators would bear in mind that those specific matters, as they were laid aside the other day by Mr. Meritt and reported back to you on Monday, I think, as having been reserved on the understanding of Friday, entered into by the committee to the effect that we should confer with Mr. Meritt and withdraw objection to those suggestions which were asked by the department to be embodied in the bill, that we could consent to, and then reserve the others for a hearing by the committee, if possible.

Senator CURTIS. You think, in view of the fact that the appropriation bill will probably come up to-day, or to-morrow at the outside, that we should delay action upon a measure that may be one of the many things that will cause an extra session of Congress in order to wait here until these people can be heard?

Mr. TOWNE. I will say very frankly that of course the request is made in contemplation of possibilities; we do not ask for such delay. Yet there are two or three matters, for instance, this substituted homestead proposition and this question about the time, to which, if at all, the interval shall be deferred when the communal mineral, oil, and gas shall cease to be communal and become individual pursuant to the old allotments, shall be postponed, is a matter of the very gravest importance.

Senator WALSH. How is it urgent?

Mr. TOWNE. It is urgent in this respect, Senator, that I believe the period has been extended until 1931, but there is a vast quantity of land—about 1,200,000 acres—that has not yet been leased, the conditions of leasing which would largely be influenced by this factor, and it is of the utmost consequence further that a definitive policy be agreed upon.

I wish to address myself just one moment to the suggestion the Senator made about the extent to which this hearing might be carried and the impossibility or impracticability of Senators attending the hearing, and I suggest this, that it would be quite practicable for the committee, unless, as Senator Curtis suggests, the opportunity can not be afforded, in view of the imminence of the bill, that the committee hear the tribal committee on these two or three amend-

ments that have been reserved, and that then perhaps a subcommittee be appointed, to the end that the hearings on the other matters may be reduced to type and spread before Congress for its information, pending the assembling of the next session. There is a tremendous amount of education that Congress needs, in my opinion, upon the situation in Oklahoma, and it is multitudinous—I do not say that invidiously, of course, Senators, I know the encyclopedic character of most senatorial minds, and yet I know there is a mundane limit.

Senator WALSH. I think you might be more specific and say as much of this committee.

Mr. TOWNE. I think, in the midst of the uncertainty of fact and the multiplicity of the differences of opinion as to questions of policy down there, that the whole subject ought to be authoritatively reviewed by representatives of the tribe for the benefit of Congress.

Of course, Senator Curtis, if this bill is to come up to-morrow, why, it will be impracticable to hear this tribe on that subject, but they could leave Oklahoma to-day; they could be here on Monday, and an amendment covering all those subjects could be put before the Senate on Tuesday.

Senator CURTIS. I understand the bill is to follow the legislative bill, which will probably pass early this afternoon. I said to you and to Mr. Dial the other day that I thought the Osages should be heard, but I believe you should first get a reply from your request to the department. The department can ask these people to come here or give its consent for them to come, and I am afraid if we acted before that we would be placed in an attitude of acting without giving the department a full chance to consider this question.

Again, it seems to me that the features you want to discuss are matters we can not possibly take up at this session of Congress, and, that being so, I do not see any hurry in acting upon this resolution so far as the committee is concerned. I know how vast those interests are, and I think those Indians should be heard; I think the tribe should be heard. I think they should be given all the time they need. Many changes are required or should be made down there, but I do not feel like taking the time. I am like Senator Walsh, I am here now away from a meeting of the subcommittee on the District appropriation bill to hear these people. I have got to go down to the Senate Chamber now; I have a resolution to present, and there are matters coming up which I want to object to if I am called, and I can not stay here any longer this morning.

So far as I am personally concerned, I am willing to do whatever the committee suggests, but I do think you should wait until you get a reply from the Secretary of the Interior, and I am willing even to come here any time I can, even miss other committee meetings, and hear the Osages, because I know how important their matters are.

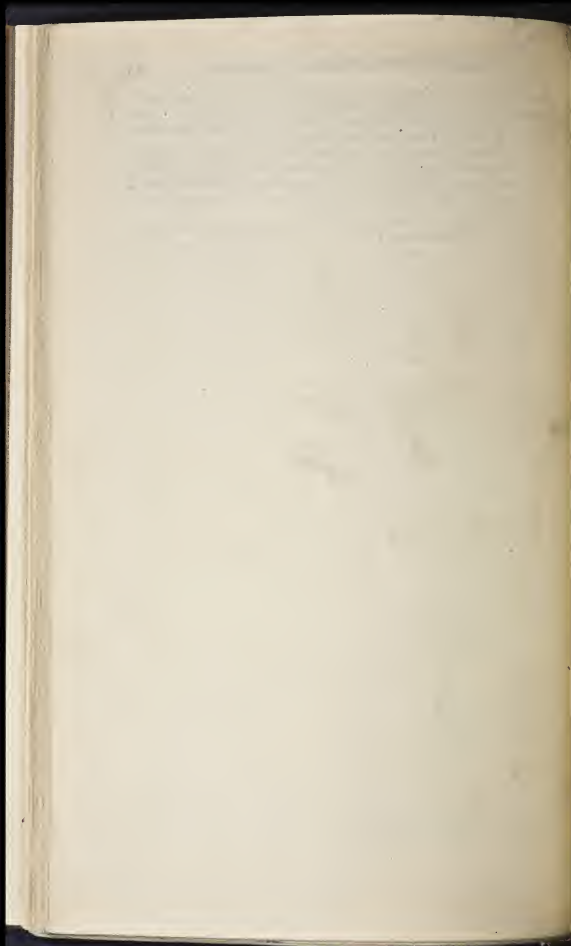
Mr. TOWNE. But, Senator, there would be no impropriety in the suggestion by the committee to the Secretary.

Senator CLAPP. I think there would be. I think one of two things should be done. I feel these Osages should be heard, but I think the matter ought to be taken up with the Department of the Interior, and if the Secretary should decide that he is adverse to their ap-

pearing then it would be for us to decide, but for us to volunteer a suggestion to him at this time—I would not feel like doing it. • If he wants to call a council it is his province to have the first opportunity to do so. Certainly it can be reached in some way.

The CHAIRMAN. These Crow Indians are pleading for a hearing. Their hour was set for 10.30, and it has been only through courtesy that we have extended this time to the Osages, and we have now taken up half an hour which belongs to the Crows. Mr. Towne, we will take up your matter to-morrow morning.

(Thereupon the committee proceeded to consideration of the opening of the Crow Reservation.)



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CONDITIONS ON THE FORT PECK
(MONT.) INDIAN RESERVATION

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HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

SECOND SESSION

ON

S. 8272

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR
TO PRORATE THE TRIBAL FUNDS OF THE
FORT PECK INDIANS

—
FEBRUARY 16 AND 17, 1917
—

Printed for the use of the Committee on Indian Affairs



WASHINGTON
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1917

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CONDITIONS ON THE FORT PECK, MONT., INDIAN RESERVATION.

FRIDAY, FEBRUARY 16, 1917.

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met, pursuant to call, at 3.30 o'clock p. m., in the committee room, Capitol, Senator Henry L. Myers presiding.

Present: Senators Myers (acting chairman), Walsh, Lane, Fernald, and Curtis.

Also present: Mr. Edgar B. Meritt, Assistant Commissioner of Indian Affairs, Mrs. Christine West, and Messrs. George Washington, Henry Archdale, James Archdale, Martin Mitchell, Otto Browning, Big Foot and Black Duck.

The committee proceeded to consider matters relating to conditions on the Fort Peck Indian Reservation in Montana.

The ACTING CHAIRMAN. We will hear the Fort Peck Indians now. Who is there who wishes to be heard?

Mr. WASHINGTON. Mr. Mitchell is one of them, and Mr. Archdale also wishes to be heard.

The ACTING CHAIRMAN. Very well. We will hear you first.

STATEMENT OF MR. GEORGE WASHINGTON, FORT PECK RESERVATION, MONT.

Senator LANE. What is your name?

Mr. WASHINGTON. George Washington.

Senator WALSH. Where do you live?

Mr. WASHINGTON. On Fort Peck Reservation.

Senator WALSH. Near what place?

Mr. WASHINGTON. Brockton, Mont.

Senator WALSH. There does not seem to be any separate map of Fort Peck, but it is shown on this map in yellow. You will observe that it lies immediately north of the Missouri River, reaching from there, not to the boundary line, but in the direction of the boundary line, and nearly to the eastern or North Dakota line.

What is your home town, Mr. Washington?

Mr. WASHINGTON. Brockton.

Senator WALSH. That reservation has been opened?

Mr. WASHINGTON. I think it is thrown open.

Senator WALSH. When was it opened to settlement? When did the settlers begin to make their entries?

Mr. WASHINGTON. I am not quite sure, but it is about two years ago.

Senator WALSH. Two or three years ago?

Mr. WASHINGTON. Two or three years ago.

Senator WALSH. The act was passed in 1908, was it not?

Mr. WASHINGTON. Yes, sir.

Senator WALSH. You may go on, Mr. Washington, and tell us what you have to say.

Mr. WASHINGTON. These two old gentlemen here were supposed to do the talking, and I was to interpret for them.

Senator WALSH. Very well; we will call them.

STATEMENT OF BLACK DUCK, FORT PECK INDIAN RESERVATION, MONT. (TESTIFYING BY INTERPRETER GEORGE WASHINGTON).

BLACK DUCK. We had our conference with the assistant commissioner. In regard to our conference, we got our answers about four days after, and the answers were not satisfactory to us. It is all nothing but promises, and that has been going on for the last few years.

The main thing is the rations on our reservation. The older people are having hard times out there, and they are in need of food. We want more rations, and if possible we would like to have the committee, or the officials, to accomplish that so as to get more rations for the older people. You all know that the old people are not able to get out and rustle for a living. The younger generation have been making a very nice living, but it is not the same with the older people. They have no way of making their living.

That is all I wish to say. The answers we got from Mr. Meritt are in the hands of Mr. Welch.

Senator LANE. What tribe do you belong to?

BLACK DUCK. The Yankton.

Senator LANE. Is there much suffering on the Fort Peck Reservation for lack of food and clothing?

BLACK DUCK. I will be very glad to tell the conditions on the reservation. Of course I would not be ashamed of myself, but it is all under Government officials. They are the ones to be ashamed of the conditions on the reservation.

Senator LANE. Will you state what they are?

Mr. MERITT. Before he goes into this, may I have incorporated in the record the reply of the office to these Indians, so that the record will show the answer of the office?

The ACTING CHAIRMAN. Yes.

Senator LANE. Have you heard this before, Mr. Meritt?

Mr. MERITT. These Indians came to the office—

Senator WALSH. They have told us, Senator, that they went to the office and got an answer which was not altogether satisfactory.

Senator LANE. How long has this condition existed, Mr. Meritt; do you know—this condition of poverty among these people?

Mr. MERITT. They were at the office about a week ago and we gave them a full hearing. I would be glad to include in the record the hearing that was given them, and also the official answer of the office.

Senator LANE. Is that the first that you heard of the condition of distress?

Mr. MERITT. We have known that there was a certain amount of distress among the older people, and we have requested the superintendent to relieve that distress as much as he could.

Senator LANE. How long have you known of this condition of distress and hunger?

Mr. MERITT. It was brought to our attention in the early part of the winter, and we directed the superintendent to relieve the distress.

Senator LANE. How long ago did you direct him; do you remember?

Mr. MERITT. I can not recall.

Senator LANE. Was it a month, two months, or three months?

Mr. MERITT. I can look up the record.

Senator LANE. Was it not a recurring complaint? Did it not happen last winter and the winter before that?

Mr. MERITT. In all these northern reservations there is always more or less distress in the wintertime, and the superintendents have specific instructions to relieve those things.

Senator LANE. And do they do it?

Mr. MERITT. I think they do, so far as the funds available will permit.

Senator LANE. Now, if provision is made by the department and by the superintendents, why are the Indians here in person and complaining year after year?

Mr. MERITT. Well, the conditions of the Indians are such on these reservations that there will always be more or less complaint.

Senator LANE. I do not question it, unless the plan is changed. Tell him to go ahead and state what the conditions are.

BLACK DUCK. We are supposed to get our rations every 14 days, and as to the amount of ration, we have got a scoop that holds about a quart of flour, for 14 days per capita, and a piece of meat about that big [indicating].

Senator LANE. And how thick?

BLACK DUCK. About that thick [indicating].

Senator LANE. Is that fresh meat or baked meat?

BLACK DUCK. It is beef—fresh meat. On the ribs it is quite thin, part of the flesh being taken off.

Senator LANE. There is a good deal of bone?

BLACK DUCK. Yes, sir; of course the quarters are a little thicker than the ribs.

Senator LANE. Do you get any beans with it?

BLACK DUCK. All through the year we drew beans twice in 12 months.

Senator LANE. Twice in the year?

BLACK DUCK. Yes, sir; that is, last year we were issued beans twice.

Senator LANE. How many beans are in that ration?

BLACK DUCK [indicating]. Just about enough for one meal.

Senator LANE. What else do you get?

BLACK DUCK. We got bacon twice this year and the biggest piece is about that big [indicating].

Senator LANE. And so they get hungry, do they?

BLACK DUCK. When we eat the small piece we are hungry for more.

Senator LANE. Go ahead.

BLACK DUCK. We got sugar twice.

Senator LANE. How do the children get along there? Do they suffer from hunger?

BLACK DUCK. The younger generation are making a better living; they are able to support the children in a better way. But old people, like myself, have grandchildren attending day school and they go hungry just the same as we do; they do not get enough.

Senator LANE. Is that the individual ration that you speak of, or how much does a family get—say, a mother and father and three or four children?

BLACK DUCK. The children are not included on the ration tickets. It is just the older people, like myself and my wife. We have got grandchildren growing up and their parents died and we are taking care of the children, and they do not go on the ration ticket.

Senator LANE. How do they get anything to eat?

BLACK DUCK. They get their dinner at the day school; and evenings, for their meals, we have to rustle from house to house among our neighbors—among the younger people.

Senator LANE. You have to beg your neighbors for food?

BLACK DUCK. Yes, sir.

Senator LANE. And what do you get from them?

BLACK DUCK. There are two young men living right by us. They are nice neighbors.

Mr. WASHINGTON. He says, "You are one of them"—meaning me—"and the other one has a home." He says, "I remember the times you gave me sugar and tea and coffee and flour and lard and you helped me quite a lot."

BLACK DUCK. There are old people there, and the way they look at it they have got money due them from the proceeds of the surplus land, and if there is any due them at the present time we would like to get this per capita payment every year, so as to buy provisions and clothing.

That is all I wish to say.

Senator WALSH. Who are your neighbors?

Mr. WASHINGTON. He says I am one of them; Fast Horse is the other. And he has got a son-in-law there, Frank Smith.

Senator WALSH. Has George Washington a good home there?

BLACK DUCK. Yes, sir.

Senator WALSH. Does George Washington suffer for the want of any food?

BLACK DUCK. No, sir.

Senator WALSH. Why is it that George Washington does not suffer for want of food and these other people do?

BLACK DUCK. He farmed a little better than a hundred acres, and is raising a good crop, and, of course, we older people could not do that; we could not afford a farm.

Senator WALSH. Is it a fact, then, that it is only the old people who are unable to work that are suffering from want of food?

BLACK DUCK. Yes, sir; it is the old people.

Senator LANE. And the little children who are dependent upon these people also suffer?

BLACK DUCK. Yes, sir.

Senator WALSH. You are taking care of some of your grandchildren?

BLACK DUCK. I am looking after one and another attends a boarding school.

Senator WALSH. Are the able-bodied Indians on the reservation who are able to work suffering for want of food?

BLACK DUCK. Not that I know of.

Senator LANE. They are not suffering?

BLACK DUCK. No, sir.

Senator LANE. Does that make you less hungry when you go without anything to eat? When you see your neighbor, who is more able to work, with plenty to eat, do you cease to be hungry?

BLACK DUCK. Of course, the able-bodied men are having plenty to eat, and living right by them, without anything, of course, I am hungrier; and I have got a blind young man there.

Senator LANE. Do these Indians hold their land in allotments?

Mr. WASHINGTON. Yes, sir.

Senator LANE. Is it irrigable land?

Mr. WASHINGTON. Part of it on the creek is lower than the other grazing land.

Senator WALSH. Senator, if you will pardon me, I am sure these other able-bodied men could tell us about that; and I would like to hear from the other old gentleman first.

Senator LANE. Very well. First, let me ask, how old are you?

BLACK DUCK. Sixty-four.

STATEMENT OF BIG FOOT, FORT PECK INDIAN RESERVATION, MONT. (TESTIFYING BY INTERPRETER GEORGE WASHINGTON).

Senator FERNALD. How old are you?

BIG FOOT. Sixty-four.

Senator FERNALD. We will be glad to have you make any statement that you wish to make.

BIG FOOT. Nine years back the tribe made a treaty with the Government. During this treaty I was expecting my death any hour, being suffering with this hand [indicating]. Up to the present time there is a lot of young men that are not able to support themselves on account of being crippled in a leg or a foot or like my hand; and some are blind who are young men.

Senator FERNALD. What has caused that trouble?

BIG FOOT. That is because of their schooling; they got sore eyes and they never were treated. Of course, most of these are orphans with nobody to look after them, and they were not treated right.

Senator LANE. Trachoma, I suppose?

Mr. WASHINGTON. Yes, sir.

BIG FOOT. Most are older people that have poor eyesight, and they are the ones that depend on me for this trip. Of course, I am crippled on one side and the limbs—one of my knees is bad; I have spasms. Our people appointed me as a delegate to represent them here in Washington. Our tribe claims that their Government must be about through with the proceeds of their surplus land on the reservation. The Government is taking that money and has been spending it on their project, and if there is any reimbursed to the tribe we will have to make use of this money to help the old people in their needs. Some of the younger generation are not educated, and they want assistance from the Government, and they would like to have me present this before the commissioner.

A majority of the Indians on the reservation made selections for their children on this proposed mineral land, and of course selections were made some time ago; and, according to the superintendent, they were to make another selection off this mineral land. Further, there is a lot of children, all the way from 4 years down, that did not have the irrigable land, and they would like to have the Government allot them 40 acres.

Senator LANE. Do you know anything about that request?

Mr. MERITT. Yes, sir; I know something about it.

Senator WALSH. The land marked in pink on the map here [indicating] is reserved coal land. That is the land that he is referring to. He wants the unallotted children allotted on this land.

Senator CURTIS. Yes; but, Senator, he said that some of the Indians had been given allotments in that section, and that now they are not permitted to take their selections and are going to be forced to make selections elsewhere.

Senator WALSH. I did not understand that.

Senator CURTIS. I would like to know from the department what authority they have to withdraw a selection after it has been given to the Indians. I do not think they have any right to do that whatever.

Senator WALSH. A bill is now pending permitting homesteads to be taken of the surface of these lands, but reserving the coal to the Indians, and it is proposed to amend that so as to allow allotments to be made on the same terms, the allottees to take only the surface, the coal to be reserved to the tribe.

Senator CURTIS. Are the oil, gas, and other minerals also reserved on that reservation?

Senator WALSH. I can not say as to that.

Mr. MERITT. No, sir.

Senator CURTIS. If they are not, they should be.

Mr. MERITT. I think I can give some information about the allotments on that reservation. Under the act of May 30, 1908 (35 Stat. L., 558) the reservation was authorized to be allotted and the surplus lands disposed of under the usual laws. The Indians were given 320 acres of land for an allotment, and 40 acres additional irrigable land. The allotted rolls were closed, and subsequently they wanted the children of that reservation to be given allotments. We procured the enactment of legislation which authorized the allotment of the newborns on the reservation. These newborns have selected, tentatively, allotments within the coal area of the reservation. It is the policy of the department not to allot coal lands, but we have submitted drafts of legislation which will permit these children to take the surface of these lands, reserving the coal for the benefit of the tribe at large.

Senator CURTIS. And not forcing them to take elsewhere?

Mr. MERITT. No, sir.

Mr. WASHINGTON. That would permit us to hold our selections, would it not?

Mr. MERITT. Yes, sir.

Mr. WASHINGTON. I got a letter from the superintendent stating that I was to relinquish my selection and then go about 40 or 50 miles west of there, on Porcupine Creek, to make a selection, and I objected to that, and we had a row.

Senator CURTIS. You did not surrender, did you?

Mr. WASHINGTON. No, sir; I told them I would rather hold it and find out the conditions.

Mr. MERITT. I will bring to the committee the draft of legislation, so that it may be incorporated in the record.

Senator WALSH. I am afraid I interrupted the old gentleman in his statement.

Senator CURTIS. Why not finish up with the assistant commissioner? We want to ask some questions, and perhaps the interpreter will want to say something about it. I would like to know how much money these Indians have to their credit.

Mr. MERITT. The Fort Peck Indians have in the Treasury at this time \$617,634.65. \$80,425.75 of that amount was reimbursed to the tribe from the money expended for the irrigation project, under the act of May 18, 1906 (39 Stat. L., 141). I think practically all this money is in the Treasury and not drawing interest at this time.

Senator CURTIS. Can that be segregated and put to the credit of each individual Indian, so that it will draw interest?

Mr. MERITT. We can segregate, under the act of March 2, 1907, as amended by the act of May 18, 1916, the proceeds of the Fort Peck Reservation amounting to \$524,949.56, but I do not believe that we can segregate the \$80,425.75 without further legislation by Congress.

Senator CURTIS. Senator Walsh has asked you to prepare an item on the Blackfeet. Can you not prepare the same for the Fort Peck and any other Indians in that State or any other State that needs it? I think we might as well settle this question and get all of this money drawing interest.

Mr. MERITT. There is quite a large amount of money in the Treasury that is not drawing interest.

Senator CURTIS. Will you submit to this committee a bill that will correct that?

Mr. MERITT. I will be glad to do that, Senator.

Senator FERNALD. Mr. Chairman, I will have to ask to be excused in a few minutes, and I should like to interrogate this young man a little, with your permission.

The ACTING CHAIRMAN. Certainly.

STATEMENT OF GEORGE WASHINGTON, FORT PECK INDIAN RESERVATION, MONT.

Senator FERNALD. How old a man are you?

Mr. WASHINGTON. Thirty-seven.

Senator FERNALD. You are in good health?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Are you married?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Have you any children?

Mr. WASHINGTON. I have three boys.

Senator FERNALD. Are they big enough to go to school?

Mr. WASHINGTON. Two of them attend the school.

Senator FERNALD. You are farming?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Have you any cattle?

Mr. WASHINGTON. I did have; I lost a few head on the railroad.

Senator FERNALD. Have you any horses?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. What do you raise?

Mr. WASHINGTON. I raise wheat, flax, and oats.

Senator FERNALD. How much wheat did you raise last year?

Mr. WASHINGTON. Last year I got rust in my wheat. I got 568 bushels, I think.

Senator FERNALD. What did you sell it for?

Mr. WASHINGTON. I got \$1.65 a bushel.

Senator FERNALD. Did you raise that yourself?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Did you hire any help?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. You had some help?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Do you and your wife get along comfortably?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. You have enough to eat?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. And if she is dressed as well as you are, you are dressed pretty well?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. You are happy?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Every young man of your age could do as well as you, if he would?

Mr. WASHINGTON. There are quite a few there; Mr. Mitchell is well off, and a lot of others are better fixed than I am.

Senator FERNALD. Every man of your age could do as well as you, if he would?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Your trouble is with the older people?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. And the claim is that they do not get enough rations?

Mr. WASHINGTON. They do not get enough rations.

Senator FERNALD. How often do they get rations?

Mr. WASHINGTON. Every 14 days.

Senator FERNALD. They get something from the Government every 14 days?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. How long will that last them, as a rule?

Mr. WASHINGTON. It depends on the size of the family. Supposing there are five or six in the family, the rations will last them about a day or a day and a half.

Senator FERNALD. Do the Indians, as a people, lay by anything in their young days to help them when they are old? You will, I am sure; but as a rule, do your people?

Mr. WASHINGTON. Yes, sir; I will explain that the best I can. The Indians have got three meeting halls, and they meet there every once in a great while, and any of the older people that need

help they give them whatever they need, such as clothing and food and little calves and fuel and hay for their horses, if they have any horses.

Senator FERNALD. Dose this society look after the children?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. Are your people temperate as a rule?

Mr. WASHINGTON. Yes, sir.

Senator FERNALD. They do not drink, many of them?

Mr. WASHINGTON. Not very many.

Senator FERNALD. Some of them do?

Mr. WASHINGTON. There are a few that do.

Senator FERNALD. Do you have much trouble with the agency?

Mr. WASHINGTON. No, sir.

Senator FERNALD. Does the agent come around to see you occasionally?

Mr. WASHINGTON. No, sir.

Senator FERNALD. You do not need his services?

Mr. WASHINGTON. No, sir.

Senator FERNALD. That is all.

Senator LANE. Do these older Indians have allotments?

Mr. WASHINGTON. Yes, sir.

Senator LANE. How much?

Mr. WASHINGTON. Including the timberland, they have got 380 acres. That is, the head of the family gets that.

Senator WALSH. George, could any arrangements be made to lease the allotments of these old Indians who are not able to do anything?

Mr. WASHINGTON. There were quite a few leases made last summer, and their leases are supposed to be paid at the end of the year; that is, in the fall, after harvesting. I interpret for several of them there about their pay, and it is slow coming in. Some of them wanted to get credit on the strength of the leases, in the stores, and of course the superintendent would not recommend it, and they have to go without.

Senator WALSH. What are the terms under which the leases are made?

Mr. WASHINGTON. There are several ways. Some will lease their allotments all for the improvements, for say, about 2 years, and the rest in cash payments.

Senator WALSH. Do they ever lease on a cropping arrangement?

Mr. WASHINGTON. No, sir.

Senator WALSH. When they lease for cash, what do they get per acre?

Mr. WASHINGTON. If a man leases all his land for five years, he is supposed to get 50 cents an acre for the improvements for the first two years and 75 cents or a dollar an acre for the other three.

Senator WALSH. Seventy-five cents to a dollar an acre is about what it will lease for?

Mr. WASHINGTON. Yes, sir.

Senator WALSH. Where do your children go to school?

Mr. WASHINGTON. I am living right by the day school there. They are attending the day school, and I intend to send them off to the reservation school after they are able to take care of themselves.

Senator WALSH. By whom is the day school conducted; or is it a public school?

Mr. WASHINGTON. It is a Government school.

Senator WALSH. Is it attended only by the Indians or do white children attend?

Mr. WASHINGTON. By the Indians only.

Senator WALSH. By the Indian children only?

Mr. WASHINGTON. Yes, sir.

Senator WALSH. Have the white settlers come and settled around you?

Mr. WASHINGTON. No, sir.

Senator WALSH. All the land in your neighborhood is allotted to the Indians?

Mr. WASHINGTON. It is all allotted to the Indians.

Senator WALSH. The white settlers are some distance, then, from where you live?

Mr. WASHINGTON. Some distance away.

Senator WALSH. Do you like that arrangement?

Mr. WASHINGTON. So far as I am concerned, I am satisfied with it.

Senator WALSH. What I mean is, which would you prefer, to have the Indians all in one place and the whites all in another place or have them interspersed among each other?

Mr. WASHINGTON. I should think it would be better to have settlers in between the Indians, so as to get a little experience from the farmers; that is, the younger generation would. I know I would be glad to have a white neighbor by me, so as to get a little experience from him in the farming line.

Senator WALSH. So that you could watch how he does things?

Mr. WASHINGTON. Yes, sir.

Senator WALSH. And go and talk with him about what you want to do?

Mr. WASHINGTON. Yes, sir; about farming experience. Of course, I am not a real farmer, but I am interested in the farming line.

Senator WALSH. After the reservation was opened and the white settlers came in, what use was made of the reservation?

Mr. WASHINGTON. It was mostly range—stock range.

Senator WALSH. Did they lease out the grazing privileges?

Mr. WASHINGTON. I can not say.

Senator WALSH. Did not some of the stockmen have the privilege of running their cattle on the Fort Peck?

Mr. WASHINGTON. As far as I know, after the allotments were made—

Senator WALSH. No; I am speaking about before the allotments were made.

Mr. WASHINGTON. Before the allotments were made, I can not say, because I do not know.

Senator WALSH. To what use was the grass on the reservation put, before it was opened?

Mr. WASHINGTON. I worked for the assistant farmer for seven years, Mr. C. R. Scoby, and we used to hire the Indians and take them from one district to another; putting up hay for the Government.

DR. WALSH. Did you have an I. D. herd there?

WASHINGTON. Yes, sir.

DR. WALSH. When was that disposed of?

WASHINGTON. They have got beef cattle there. That is beef at that substation in our district there, Box Elder. They are paying hay for them at \$4 a ton at the present time.

DR. WALSH. What have you to say, George, about whether able-bodied Indians on the Fort Peck are getting along well or

WASHINGTON. Of course, some are in a bad fix, like the old ones there—

DR. WALSH. Yes; but leave the old and decrepit Indians out of consideration, and take the able-bodied Indians.

WASHINGTON. The majority of them are farming; that is those who are able, that have their implements and their power to do so; some that are not able to maintain the implements are not farming. They hire out and work by the month or by the day.

DR. WALSH. You have lived on the reservation all your life?

WASHINGTON. Yes, sir.

DR. WALSH. You know what the conditions were before the reservation was opened. Were there any of them that suffered for lack of food before the reservation was opened?

WASHINGTON. Of course, up to Scoby's time there was plenty of work, and since this ditch started there was plenty of work.

DR. WALSH. For quite a good many years the Indians worked the irrigation ditches?

WASHINGTON. Yes, sir.

DR. WALSH. And they got wages from that?

WASHINGTON. Yes, sir.

DR. WALSH. Do you remember from before the time that the irrigation work was started?

WASHINGTON. After I quit Scoby I went off the reservation and worked out all summer and hired out there by the month, and then I bought myself teams I went off the reservation and put up with a ranchman off the reservation and stayed there all summer, working to plow and helping put up hay and bale hay, and then came back in the reservation late in the fall.

DR. WALSH. So you can not speak very much about what the conditions were?

WASHINGTON. No, sir.

DR. WALSH. What have you to say as to whether it was a wise thing to open the reservation and let the white people in, or whether it would all have been kept as a reservation, exclusively for the Indians? In other words, what do you think of the wisdom of the thing of opening the reservation?

WASHINGTON. The way I figure it, if the settlers come in there and make their payments as they ought to, it would be quite a help to the Indians. Of course, the way it is, you know, they come in and make their four years' payment on their lands, and money is coming in, and at the same time what little comes in the Government takes it—that is, as a reimbursable fund, you know, on the one hand—and we do not get hardly anything out of it.

Senator WALSH. That is to say, if you were actually able to get the money that was coming to you, from the sale of the lands, you think it would be a good thing?

Mr. WASHINGTON. Yes, sir.

Senator WALSH. The trouble is that you do not really get the money?

Mr. WASHINGTON. We do not really get the money.

Senator WALSH. If the money should be distributed to the Indians, what use would they make of it?

Mr. WASHINGTON. The Indians, the majority of them, are willing to farm and willing to put up a good home for themselves; and I should think it would be a good thing to let them spend it that way, and they would be willing to use it that way.

Senator WALSH. You think then it would be profitable to the Indians to sell off their excess lands, as they are doing, if they could get the money for the purpose of improving their places?

Mr. WASHINGTON. Yes, sir.

Senator WALSH. And then have the white settlers in among the Indians, so that the Indians could learn from them how to carry on farming?

Mr. WASHINGTON. Yes, sir.

Senator LANE. Do you irrigate your land?

Mr. WASHINGTON. No, sir.

Senator LANE. How many bushels to the acre of wheat can you raise in an ordinary season?

Mr. WASHINGTON. In the rainy season there the wheat that I had went between 30 and 40 bushels to the acre, and the oats averaged about sixty-odd bushels to the acre.

Senator LANE. Do you have water that you could use?

Mr. WASHINGTON. No, sir.

Senator LANE. Do you know much about irrigation?

Mr. WASHINGTON. No, sir. I am in the eastern part of the reservation. The ditch did not come out that far.

Senator CURTIS. George, I understood you to say that the Indians got cash rent instead of crop rent?

Mr. WASHINGTON. Yes, sir.

Senator CURTIS. Does the department permit them to make crop rent leases?

Mr. WASHINGTON. No, sir; I do not think so.

Senator CURTIS. Would any of the Indians rather make a crop rent?

Mr. WASHINGTON. That is, if they were offered a fourth or a fifth, I think they would be satisfied.

Senator CURTIS. You think some of them would rather do that to have the cash?

Mr. WASHINGTON. Yes, sir.

Senator CURTIS. If they could get crop rent, they would be apt to keep some cows and some pigs, and some horses, would they not?

Mr. WASHINGTON. Yes, sir.

Senator CURTIS. And not getting crop rent, they usually get rid of their horses and cows and pigs?

Mr. WASHINGTON. Yes, sir.

STATEMENT OF BIG FOOT—RESUMED (BY INTERPRETER
GEORGE WASHINGTON).

Senator WALSH. Did you have anything further to say?

BIG FOOT. I have not much to say concerning the tribe, but for my own benefit I wish to say this much: I have got 40 acres which is supposed to be irrigable, and I would not be able to work on this irrigable land, and the best thing for me to do is to turn this 40 acres over to the Government and have them pay me in cash, so as to get the use of the money. That is all I have to say.

Senator CURTIS. Do you rent this land?

BIG FOOT. No, sir; I have not made any use of this 40.

Senator CURTIS. Could you rent it if you wanted to? Are there people there who would like to rent it?

BIG FOOT. If I knew that I was going to live a long while yet, I might be able to do that; but I am getting old.

Senator LANE. Would you not rather have something coming in from it than let it lie idle?

BIG FOOT. The way it is, the land is lying idle, and I might have a relative that would be able to support me, and if I were to pass away this relative of mine might become an heir to this 40.

Senator LANE. That would not interfere with your renting it.

Mr. MERITT. You could either rent the land or sell it and use the proceeds.

(The statements were interpreted to the witness by Dr. Eastman).

Dr. EASTMAN. I said to him that the proceeds would supply him with food.

Senator LANE. Does he not understand that that would not prevent him selling it? That he could rent it on shares and get more for it, and in the meantime he might get his living from it?

Dr. EASTMAN. He used the expression, "Lying idle." He says he asked to lease it, but nobody did it.

Senator LANE. Oh, has he been to the superintendent?

Dr. EASTMAN. Yes, sir.

Senator LANE. I beg your pardon.

STATEMENT OF GEORGE WASHINGTON—Resumed.

Senator WALSH. George, has there been opportunity to lease land like that owned by the old gentleman under the ditch to some one who wanted to raise alfalfa?

Mr. WASHINGTON. His land is not under the ditch. It is close to the timber and full of bullberry brush, and men have to be hired at about \$2.50 to crop this brush.

Senator WALSH. It is not under the ditch at all?

Mr. WASHINGTON. No, sir.

Senator LANE. How did he come to select an allotment out among the brush instead of under the ditch?

Mr. WASHINGTON. The way it was, he and I made selections and he made his selection right adjoining mine. At this time I was away, out in South Dakota, shipping horses for an uncle of mine, and I came down there and stayed about two weeks and went on back, and somebody beat us out of our selections.

Senator LANE. Jumped your claim?

Mr. WASHINGTON. Yes, sir; F. C. Campbell made his selection for it.

Senator LANE. Had you already made a selection of it?

Mr. WASHINGTON. Yes, sir; for my own part I made my selection and had the descriptions of the land, the range number and so on, and I presented it to the allotting agent, and he said that would not do. He said they would rather have me drive stakes there. So I went and drove stakes in the corners of the section lines and that was objected to. So we had no way of holding our selections.

Senator LANE. Who objected?

Mr. WASHINGTON. Both the allotting agents there.

Mr. MERITT. Did some other Indian get the land that you selected?

Mr. WASHINGTON. I made several selections and somebody else beat me out of them on account of these two reasons. In the first place I got the numbers, and presented them to the officer there, and he said it was not the right way I should do, and they told me I should drive stakes in there and have the dates of my selection, and so on; so I did, and I failed to get my allotment on this, in two different ways.

Senator LANE. Somebody got it staked first, possibly?

Mr. WASHINGTON. I guess so; I do not know. There were no stakes there when I went there.

Senator WALSH. Let us hear the other gentleman.

STATEMENT OF SPOTTED EAGLE, FORT PECK INDIAN RESERVATION, MONT. (TESTIFYING BY INTERPRETER GEORGE WASHINGTON).

Senator WALSH. Will you give your name, please?

SPOTTED EAGLE. I have got two names. My English name is Otto Browning; my Indian name is Spotted Eagle.

Senator WALSH. Where do you live?

SPOTTED EAGLE. West of Poplar.

Senator WALSH. Do you live on your allotment?

SPOTTED EAGLE. On my wife's allotment.

Senator WALSH. How many acres are there in that allotment?

SPOTTED EAGLE. Three hundred and twenty acres.

Senator WALSH. What are you doing with your own allotment?

SPOTTED EAGLE. My own allotment is close to the boundary of the reservation.

Senator WALSH. How many children have you?

SPOTTED EAGLE. Four.

Senator WALSH. You may go on and tell the committee whatever you have to say.

SPOTTED EAGLE. I have come here as a kind of witness. I was appointed to come here and tell what I know concerning the reservation. The first thing I want to say is that there are two older men here that had a conference with the Indian Commissioner, and wanted to do a certain thing, and that was done. Of course if anybody should make a promise to a person it is supposed to be carried out, and there should be witnesses to it. That is why I want to come before the committee.

Among our Indian race, we are treated all alike—poor and rich alike; and all the younger generation, that are in a better fix, are the ones that have been supporting these older people.

The next thing I want to say is about the money question. Whenever we Indians have any money coming to us the white people will be scheming a way to take this money away from us.

I wish to say this much concerning our reservation, and the project on our reservation. If the Government sees that that ditch would benefit the tribe, why do they not take it and pay for it at their own expense? Whenever there is a reservation to be opened, of course the Government people have got to take a hand in it and have a plan planned out, so as to get this money away from the tribe for their benefit, and they do not care much about the Indian tribe.

Dr. EASTMAN. It is not the money, exactly. He said "resources."

Mr. WASHINGTON. Yes; resources.

Dr. EASTMAN. And it is not "Government;" he says "bureau employees," those are the words that he used.

SPOTTED EAGLE (by Interpreter George Washington). If they intended us to spend all our money from the proceeds of our land—

Dr. EASTMAN. Let me translate that.

SPOTTED EAGLE (through Dr. Eastman). Supposing we expend all our funds on this irrigation; the way it is going, it does not run. Water does not run uphill. Supposing we expend our funds at the rate we are expending them now, and nothing coming from them, we will soon have no funds left. If we wait for the day when it will run, we will be all starved to death by that time. When the men come out there—the surveyors—

Mr. ARCHDALE. Let me interpret that. He wants the Senators to understand what he is talking about.

SPOTTED EAGLE (through interpreter Henry Archdale). The reclamation layout, surveying that blue there [indicating]—some of us are up to the highest ridges which can not be irrigated except with a bucket. That is the only way you could water those higher ridges.

Dr. EASTMAN. Unless you pump it up, he says.

Senator LANE. Or carry it up in a bucket?

Dr. EASTMAN. Yes, sir.

SPOTTED EAGLE (through interpreter Henry Archdale). There are two or three places that they started to make a ditch and neither one of them is complete. In surveying, it looks as if they picked out the worst place, right along the bank of a creek or river. It caved in. I worked in there, and there is a great many more people that did the same things I did. They have to do the work over again.

The way I see it, so long as we have any money due us on the reservation, the Government tries to make that ditch until they have it all spent.

Senator LANE. I would like to ask the assistant commissioner how much has been expended on that, and how much more is contemplated to be expended.

Senator WALSH. Senator, there are quite a number of ditches.

Senator LANE. That is what he says. He says they are scattered around, none of them complete.

Mr. MERITT. The cost of irrigation construction, maintenance, and miscellaneous, up to July 1, 1916, amounted to \$485,293.55.

The estimated additional cost to complete the project is \$4,615,000. That project when completed will cover an irrigable area of 150,000 acres, and the estimated cost for irrigation is \$38 per acre.

Mr. ARCHDALE. Senator, I would like to say a few things in that line myself.

Senator CURTIS. Are they irrigating any of that land at all?

Mr. MERITT. A very small amount has been irrigated.

Senator LANE. I want to ask Spotted Eagle how much benefit the Indians have received from these different irrigation schemes.

SPOTTED EAGLE (by Interpreter Henry Archdale). Nothing.

Senator LANE. Are there many Indians using the water for farming?

SPOTTED EAGLE. I live down near Poplar. I am down there, but I have never known anyone to use that water yet.

Senator WALSH. How much land do you cultivate?

SPOTTED EAGLE. Forty acres.

Senator WALSH. What kind of crops do you raise?

SPOTTED EAGLE. Wheat and oats.

Senator WALSH. Have you had good crops?

SPOTTED EAGLE. No, sir.

Dr. EASTMAN. He says frost killed them.

Senator WALSH. The frost killed them?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. How many years have you tried to cultivate a crop?

SPOTTED EAGLE (by Interpreter Henry Archdale). This last year is the first time.

Senator WALSH. And the frost killed it that time?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. Have you any cattle?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. How many?

SPOTTED EAGLE. Eight head.

Senator WALSH. Are they cows, or what are they?

SPOTTED EAGLE. Cows and calves.

Senator WALSH. Have you any horses?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. How many?

SPOTTED EAGLE. Thirteen head.

Senator WALSH. Have you any farm implements?

SPOTTED EAGLE. Yes, sir; I have got everything.

Senator WALSH. How did you get the farm implements?

SPOTTED EAGLE. I sold some of my land; that is how I got it.

Senator WALSH. You sold some land and bought them?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. Were any other crops in your locality killed by frost?

Dr. EASTMAN. He says quite a number.

Senator WALSH. Are you not going to try again this year?

SPOTTED EAGLE (by Interpreter Henry Archdale). Yes, sir; if I live to that time, I will try it again.

Senator WALSH. How old are you?

SPOTTED EAGLE. Forty-two.

Senator WALSH. Do you make a living?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. You have enough to eat?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. And enough to wear?

SPOTTED EAGLE. I am all right in that way.

Senator WALSH. Do the able-bodied Indians, like you, on the Fort Peck Reservation, generally, have enough to eat and wear?

SPOTTED EAGLE. Yes, sir; quite a lot of them are in just as good a fix as I am, and a little bit better; but in order to keep the old people up we can not get up. The old people keep us down. We think the Government ought to give us those things so that we could help the poor Indians.

Senator WALSH. That is, they have to do so much to take care of the old people that they do not get along as fast as they ought to?

Mr. ARCHDALE. Yes, sir; that is what he means.

Senator WALSH. Are many of the old people in want?

SPOTTED EAGLE. Yes, sir; just as I have said.

Senator WALSH. Is your land under any of the ditches so that it can be watered from them?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. Have you ever used the water?

SPOTTED EAGLE. No, sir.

Senator WALSH. Do you know anybody in that neighborhood, on the reservation or off the reservation, who irrigates?

SPOTTED EAGLE. No, sir; I do not.

Senator WALSH. Did you ever see anybody raising crops by irrigation?

SPOTTED EAGLE. I have seen the irrigation ditch in Yellowstone, off the reservation.

Senator WALSH. The lower Yellowstone?

SPOTTED EAGLE. Yes, sir. I know this much, that people who live on the ditch now all desert that place.

Senator WALSH. Are you speaking now about the lower Yellowstone?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. That is, the people under the ditch on the lower Yellowstone are deserting that place?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. Do you know the neighborhood just west of the reservation, at Chinook—between Chinook and Malta?

SPOTTED EAGLE. No, sir.

Senator WALSH. Have you ever been over there?

SPOTTED EAGLE. Yes, sir; I go through there on the train.

Senator WALSH. Do you know whether they irrigate over there or not?

SPOTTED EAGLE. I have been through there at night and never noticed.

Senator WALSH. Have you any white neighbors?

SPOTTED EAGLE. I have got one white neighbor about 3 miles north of my place.

Senator WALSH. All the rest of your neighbors are Indians?

SPOTTED EAGLE. Yes, sir; all Indians.

Senator WALSH. Where do your children go to school?

SPOTTED EAGLE. One has quit school already. I sent one of my children to South Dakota. I have two that I have not put in school yet; they are too small.

Senator WALSH. Would you prefer to have white neighbors, or would you rather that they were all Indians about your place?

SPOTTED EAGLE. I would as soon be mixed up with the whites.

Senator WALSH. You would have the Indians mixed up with the whites?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. Why?

SPOTTED EAGLE. So that they could learn a good many things through the white people, and get encouragement from the white people.

Senator WALSH. Would you like to have your children go to school with the white children?

SPOTTED EAGLE. It does not make any difference to me; anyway as long as my children are in the school.

Dr. EASTMAN. But he says they learn quicker with the white children.

Senator WALSH. He says they learn quicker with the white children?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. Do you have good roads in that country?

SPOTTED EAGLE (by Interpreter Henry Archdale). Our country is level.

Senator WALSH. Are the roads good all the year round?

SPOTTED EAGLE. Yes, sir; we have good roads all the time.

Senator WALSH. Have you any churches?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. Where is your church?

SPOTTED EAGLE. There is one down below the Indian reservation, down the Muddy; one in Broekton, one at Chelsea, one at the Point, and at Oswego there are two churches.

Senator WALSH. Do you think it was wise or unwise to open the reservation and allow the white settlers to come in?

SPOTTED EAGLE. It is pretty wise; but the only thing that is wrong is to allow the ditch on the reservation. That is the only wrong step they made.

Senator WALSH. They made a mistake in putting any money into the ditch?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. But you think it is a good thing to have the whites come in among the Indians?

SPOTTED EAGLE. Yes, sir.

Senator WALSH. That is all. Is there anyone else to be heard?

Mr. MITCHELL. I would like to say a few words.

STATEMENT OF MR. MARTIN MITCHELL, FORT PECK INDIAN RESERVATION.

Senator WALSH. Where do you live?

Mr. MITCHELL. At Wolf Point, Mont.

Senator WALSH. Are you an Indian of the Fort Peck Reservation?

Mr. MITCHELL. Yes, sir.

Senator WALSH. And you live at Wolf Point?

Mr. MITCHELL. Yes, sir.

Senator LANE. Are you a full blood?

Mr. MITCHELL. I am mixed.

Senator LANE. Quarter or half?

Mr. MITCHELL. Half and half, I think, Senator.

My speech will not be very long, Senator. I am not in school, you know; I am a workingman. I am just going to tell you what is wrong and what is right, in my opinion.

I heard this talk about these ditches. You, Senator, may think the Indians are down on the ditch now just because they want money in place of the ditch, but that is not it. We made a kick on the ditch because we know it is no good. It is a dead one to the Indians. I have seen that with my own eyes. The Reclamation Service have got awfully good field glasses. I looked through them myself and I saw a cow about 7 miles away; and it seems as though they used those glasses on the Indians, and saw that the Indians had some money to build ditches, and they are building ditches all over. I was the first Indian on that reservation who got hold of a plow on that ditch. I was the one that plowed the first furrow, and I know it is a graft, because I worked with them the year round. We built a ditch here; we started with about 300 teams. In about a week the boy said, "Mitchell, we have got to drop about half; if we don't we will run out of money and we will run out of a job." They tried to stretch that job longer. They looked to their own pockets. After another week they dropped the other half. They could have finished that work in no time if they wanted to, but they kept us dropping off, and finally there would be only one Indian working in that ditch, but they had the whole crew working themselves.

Senator LANE. There were a lot of bosses?

Mr. MITCHELL. A lot of bosses.

Senator LANE. And a small crew?

Mr. MITCHELL. Yes, sir.

Here is another thing that they did: They had a regular town there at Oswego to build a ditch. We started the ditch there right by Oswego. Before we got through, they said, "Well, we have to make a move, about 45 miles east, to start another ditch." I told the boss, I said, "Boss, what is the matter with finishing this before we make a move?" He said, "You don't understand. Before we stop this ditch, we have to open another one. If we open it they can't stop us." So I said nothing. So they moved that town. They had houses that cost \$50 or \$60, I think. They hired Indians to move those houses 45 miles over the land—the bad land. They had about 12 teams of horses on each house. Before they got to the place, those houses cost \$300 apiece, I think. It took about three weeks to get there. That is why I say it is a graft.

I believe if they did not have that ditch on the reservation, it would be a whole lot better for the Indians. I have got a piece of land of my own, farm land, and I will not trade it off for any ditches on the reservation. I have been farming for the last 15 years and have had a good crop every year; and the people that are farming on the ditch do not raise anything. The crops are killed, some of them; some of them do not get water when they want it.

Senator LANE. I have heard that complaint before—that just at the time the Indians want water they do not get it, but long after it is too late, after the crop is practically killed, down comes the water in plenty.

Mr. MITCHELL. Yes, sir. Now, we have a ditch, an old ditch. The Indians built that themselves by hand, and the women dragged sage brush, brush about as big as my arm; and they irrigated that and raised good hay. After the Government saw that, they put a fence around it and forbade us to go in it. They worked it for their own use and they have been getting 300 tons of hay there. They get the Indians to cut that hay on shares—about 25 per cent, I think, the Indians get—and the rest of it they put up for their six head of horses, and they sell that hay around town at \$15 a ton.

The worst part of it on this ditch is that 40 acres our farmer reserved for his own use. The blacksmith cuts that 40 acres for his own use, and he and the farmers divide that hay. The blacksmith has been there for 20 years, I think; he is old now and we have no use for him. He is not doing anything at all. We have our own blacksmith in the town; we can go over there and get our work done quickly. He is not doing anything but raising cattle and horses. We do not need that blacksmith any more.

Mr. MERITT. What is that blacksmith's name?

Mr. MITCHELL. Joseph Piper.

Senator WALSH. You say you live in the town of Wolf Point?

Mr. MITCHELL. Yes, sir; I live in the town.

Senator WALSH. What do you do there?

Mr. MITCHELL. I was forced to move into town in order that my children could go to the public school; and besides I am in business in town. I am running a livery barn.

Senator WALSH. Where was your place on the reservation?

Mr. MITCHELL. About 9 miles east of Wolf Point.

Senator WALSH. Under the ditch or above the ditch?

Mr. MITCHELL. Above the ditch.

Senator WALSH. How much do you cultivate?

Mr. MITCHELL. About 214 acres.

Senator WALSH. On your own allotment?

Mr. MITCHELL. Yes, sir.

Senator WALSH. What crops did you raise on that?

Mr. MITCHELL. Oats, wheat, flax, and garden stuff.

Senator WALSH. How did you do this year?

Mr. MITCHELL. This year I did not do very well.

Senator WALSH. Did the rust strike you?

Mr. MITCHELL. The rust struck me a little bit, but not much. Still I had a pretty fair crop.

Senator WALSH. What did you get for it?

Mr. MITCHELL. You mean the price?

Senator WALSH. Yes.

Mr. MITCHELL. About \$1.65 for the wheat.

Senator WALSH. How much did you thrash?

Mr. MITCHELL. About 80 acres of it I cut for hay, oats, for my cattle, and the wheat, I think, only went about 21 bushels an acre.

Senator WALSH. Is not that a pretty good crop?

Mr. MITCHELL. Well, not compared with what we used to get.

Senator WALSH. What do you ordinarily get?

Mr. MITCHELL. We used to get from 40 to 42 bushels to the acre.

Senator WALSH. You must have been doing pretty well, then, on your place?

Mr. MITCHELL. Oh, of course, I had to do it.

Senator WALSH. Are you peculiar in that way, or are there other Indians in that neighborhood who are doing pretty well?

Mr. MITCHELL. Some of them are doing pretty well. Some of them are better off than I am—farther west of me.

Senator WALSH. Are the Indians generally pretty industrious, hard working?

Mr. MITCHELL. Yes, sir.

Senator WALSH. Do they drink much?

Mr. MITCHELL. I will tell you; that is something I want to speak about. I am glad you asked me the question.

This has got to be stopped—these whisky detectives on the reservation. Before these whisky detectives came on the reservation we never touched whisky; but after they came in there they wanted to make a case and travel, and they got some Indian boys to buy whisky to get some poor farmer to make a trip to Helena. As long as they do that, we never quit drinking whisky. We get the mileage to go to Helena, and get \$3 a day besides. Any time you catch us drinking whisky and punish us, you would never see an Indian drinking whisky. We make a practice of going to Helena because we get paid for it. I know an Indian boy who got drunk and broke some window glasses and got arrested. He was taken to the Indian court. He said, "I do not want to be tried here; I want to go to Helena." So the judge dropped it. I went out and told the Indian agent and he punished him. He just wanted to make a trip to make money; so he got punished.

Senator WALSH. Let me ask you this: You made your selection, of course, yourself, of your allotment?

Mr. MITCHELL. Yes, sir.

Senator WALSH. And you selected above the ditch and not under the ditch?

Mr. MITCHELL. Of course, I got 40 acres; it is supposed to be a ditch sometime, but there is no ditch there yet.

Senator WALSH. Was every other Indian given the same opportunity to select 40 acres under the ditch and the remainder of his allotment above the ditch?

Mr. MITCHELL. Yes, sir.

Senator WALSH. So they are all in that same fix?

Mr. MITCHELL. Yes, sir.

Senator WALSH. Have any of the Indians used the water under the ditch?

Mr. MITCHELL. Yes, sir; a few; about one or two that I know of.

Senator WALSH. Do they raise grain or alfalfa?

Mr. MITCHELL. I do not know what they do raise. Mr. Archdale will explain it to you after you get through with me. He has been farming on the ditch.

Senator WALSH. Have you any white neighbors in your neighborhood?

Mr. MITCHELL. No, sir.

Senator WALSH. They are all Indians?

Mr. MITCHELL. All Indians; yes, sir.

Senator WALSH. How far away from you are there any white settlers?

Mr. MITCHELL. Of course the reservation is just opened up now. I think we will have some neighbors about 2 or 3 miles away from me.

Senator WALSH. Which would you prefer—to have the Indians all have Indian neighbors, or to have white neighbors?

Mr. MITCHELL. I think the best thing to do is to have them mixed up.

Senator WALSH. Why?

Mr. MITCHELL. Because they will get some schooling.

Senator WALSH. You get better schools in that way?

Mr. MITCHELL. Yes, sir; I mean good schools for the farmers, to teach us how to farm.

Senator WALSH. Would there be any advantage to your children in going to the same school with the white children?

Mr. MITCHELL. Yes, sir; I have had some experience on that. I was at school myself four years at Poplar, and I could not hardly sign my name when I quit.

Senator WALSH. That was a Government school?

Mr. MITCHELL. Yes, sir.

Senator WALSH. There were no children except the Indian children?

Mr. MITCHELL. No, sir; my daughter, my oldest child, went to school for about seven or eight years, I guess, and she is only about in the second grade, I think. But I have a boy in the public school; he has not been there quite a year and a half. He is only 8 years old and he can figure quicker than any man I ever saw in my life. He is in the fourth grade now, going on the fifth grade, and he has been there just a year and a half. He did not understand a word of English before he went to that school and now he can talk just as good English as anybody. He was among the white children, you see.

Senator WALSH. So what have you to say of the wisdom of opening up the reservation so that the white settlers can come in among the Indians?

Mr. MITCHELL. Well, I thought that would be a pretty good idea, but I never dreamed about this reclamation coming in and eating up all the money.

Senator WALSH. Leave the Reclamation Service out of it. What would you say about the wisdom of opening up the reservation and letting the white settlers come in among the Indians?

Mr. MITCHELL. I thought it would be a pretty good thing, because the surplus land would be thrown open for the farmers to come in and we would get that money and buy what we needed—machinery and all that—and we would build houses and be like the white men. That is the way I looked at it, but I found out I made a mistake.

Senator WALSH. And the mistake was that the money went to build the irrigation ditches?

Mr. MITCHELL. Yes, sir.

Senator WALSH. Now, Mr. Mitchell, do you understand now that no part of your share of the money can be taken from you to pay for the ditch?

Mr. MITCHELL. Well, I understand that; but there will be a ditch run to my house before they quit. Because they are never going to quit, the way it looks now. We can not stop it. We fight and fight and try to stop them, and we just can not do it.

Senator LANE. Mr. Archdale, you said you wanted to make a statement?

Mr. ARCHDALE. Yes, sir.

STATEMENT OF MR. HENRY ARCHDALE, FORT PECK INDIAN RESERVATION, MONT.

Mr. ARCHDALE. Senators, I have been under the ditch about three or four years. I am the only one, I think, who ever used that ditch there. Everybody knows a man in my fix—I have got 60 acres broke; I have got riding plows, and everything, and I have had a very good man up there, an expert irrigating farmer, Mr. Hogshead, and he taught me all about how to use the water. I have used that water for four years. I am not going to say whether the ditch is bad or good, because I do not understand yet. That irrigating system is a trade in itself; I know that much. It is not everybody that can go in there and make a success of it; I know that. I had 40 acres there, and when I first went in there, I thought—and all the rest of them had the same thought that I had—"I am right here; this is my 40 here, and the headgate is right here," and I thought it would be a pretty nice thing. I was pretty anxious to use that water. I thought the only thing to do was to raise that up and walk off. But I found out different. The expert farmer comes along and says, "Henry, now it is time for you to irrigate. You must plow through here and plow this way." It takes me two weeks to irrigate this 40. Now, if it is going at that rate, there is 250,000 acres on the ditch; I am right in it; they broke about 300 acres and farmed it, and the rest is hay. I was this much in the muck [indicating] there for two weeks.

Now, the other part, I knew this myself, and the farmer came there himself to teach me and help me work that every day—that farm we had there. I let my boy have half of it, on the dry land. I told him to use this half—I had 60 acres and I gave him about 20 acres. I said, "You use this and I will use this." I went out and irrigated. Now, when it came down to cutting, my wheat looked fine and his did not look so well; but when they got down to the market, his wheat brought No. 1, and mine was behind.

That is all I wanted to say. That is every year; and this year, out of 60 acres, you can say part of that is watered. I did not irrigate all of that. Part of it you can not get any water on. I have been trying to get water on that. They promised me "We will fix it," but no fixing has come yet.

Senator LANE. You mean that it does not reach you?

Mr. ARCHDALE. No, sir. I am right at the end, but there is a certain piece that is a little higher. It is a little low here [indicating]. You have got to work that so it will reach up here [indicating]. There is only 30 acres that I could get water on. Now, I can not see what advantage that is. But it does raise good hay, I know that; it surely raises fine hay there. But I can not see any difference, because I tried four years. And then, another thing, this last year I can not get that water. Those fellows ahead of me there use it for one month, and when the time came, my grain was a little too ripe. It was too late. If it takes two weeks to irrigate one 40, by that time the next fellow below me with his crop, will need the water at the same time as I do. If one or two of them get it, the others will not get the benefit.

Senator WALSH. But if you could get the water you would like to make use of it?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. And it makes the grain grow fine, of course?

Mr. ARCHDALE. If they get water.

Senator WALSH. But, as I understand you, the grain does not bring as much as the grain that is grown on the dry land?

Mr. ARCHDALE. Oh, it brings just as much; but, as I say, I thought I had the best of it, but my boy who raised on the dry land brings better wheat than my wheat.

Senator WALSH. It brings a better price?

Mr. ARCHDALE. Yes, sir; a better grade.

Senator WALSH. It is a better quality of grain?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. Now, is there anybody raising grass with the water?

Mr. ARCHDALE. Yes, sir; that is all we do raise up there.

Senator WALSH. That is all you raise where you irrigate?

Mr. ARCHDALE. Yes, sir; where we get water we surely raise fine hay.

Senator WALSH. Is there anybody raising alfalfa on the irrigated ground?

Mr. ARCHDALE. Yes, sir; there is one fellow.

Senator WALSH. Mr. Archdale, you recognize, do you not, that the real use to which you should put the land, eventually, that you irrigate, is to raise grass?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. Either timothy or alfalfa?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. And your grain you would raise above the ditch where you do not irrigate?

Mr. ARCHDALE. I do not understand.

Senator WALSH. I say, the grain you would raise on your dry land, above the ditch?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. And under the ditch you would raise forage crops?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. You know the country down at Chinook, of course?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. And you know the whole flat?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. They raise the finest alfalfa in Montana there, do they not?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. They raise it all by irrigation?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. And on the benches outside they raise grain by dry farming, do they not?

Mr. ARCHDALE. Yes, sir.

Senator WALSH. And is not that just exactly the plan on the Fort Peck Reservation—the idea being to raise alfalfa and hay on this area along the river here [indicating] under the ditch, and raise grain on the land above the ditch?

Mr. ARCHDALE. Yes, sir. Now, that is the point. They all know that the water is all right, but the whole trouble with those people is about the money. To-day I was sitting here listening and they do not care about the ditch but about the money that is spent, the money that is due to the people. They want to know how long it will be before they get a return from the money that is spent on the ditch. That is the whole hitch, right there.

Senator WALSH. That is, they do not really object to the water; they would like to have the water, but it is a question as to how much it is going to cost them and when they are going to get the water?

Mr. ARCHDALE. Yes, sir.

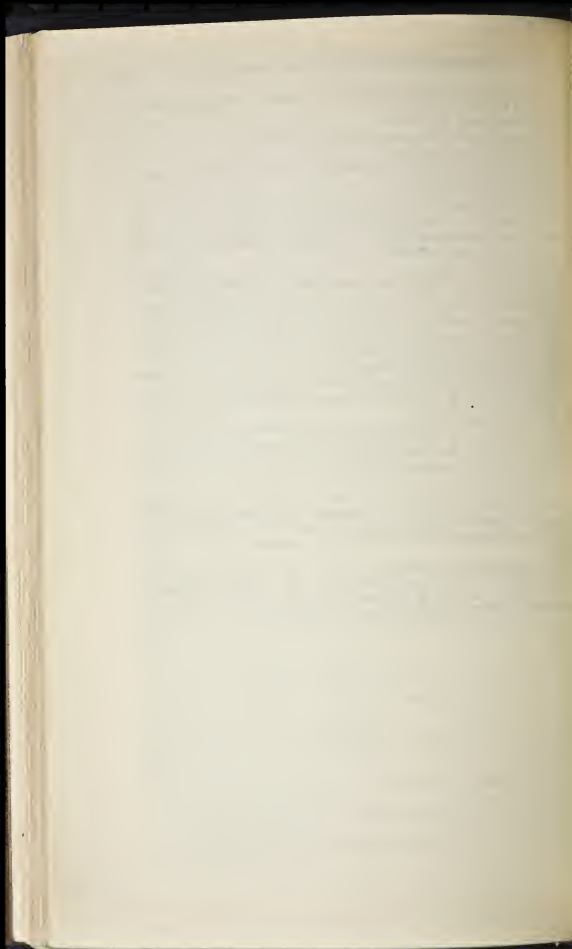
Senator WALSH. That is to say, you all believe that the Reclamation Service is not doing the work the way it ought to be done?

Mr. ARCHDALE. No, sir; Mr. Mitchell explained just how that worked, and I do not want to butt in there. I am just telling what I know about it.

Dr. EASTMAN. It ought to be understood that the Fort Peck Reservation is in two distinct parts. These two gentlemen come from the upper part, and the southern part is the Sioux division and the ditch is in there that those men spoke of, and the other ditch is in the upper part.

Mr. ARCHDALE. If anything is going to do me good, it is going to do them good, and if it is going to harm them, it will do me harm.

(Thereupon, at 5.10 p. m., the committee adjourned until tomorrow, February 17, 1917, at 10.30 o'clock a. m.)



AFFAIRS ON FORT PECK (MONT.) INDIAN RESERVATION.

SATURDAY, FEBRUARY 17, 1917.

UNITED STATES SENATE, COMMITTEE ON INDIAN AFFAIRS, *Washington, D. C.*

The committee met, pursuant to call, at 10.30 o'clock a. m. in the committee room, Capitol, Senator Thomas J. Walsh, presiding.

Present: Senators Walsh (acting chairman), Lane, Johnson, Clapp, Curtis, and Fernald.

Present also (representing the Fort Peck Indians) the following: Mrs. Christine West and Messrs. Henry Archdale, James Archdale, Martin Mitchell, Otto Browning, George Washington, Big Foot, and Black Duck.

The committee resumed the consideration of conditions on the Fort Peck Indian Reservation, Mont.

The ACTING CHAIRMAN. Mr. Archdale, you had not finished your statement when we adjourned yesterday. You were talking about the irrigation system. You may proceed.

STATEMENT OF MR. HENRY ARCHDALE—Resumed.

MR. ARCHDALE. Mr. Chairman and gentlemen, I made one mistake yesterday afternoon when I was talking about that ditch. I should have said 2,500 acres. I think I made it more than that. I think I said 25,000, or something like that, and I want to correct that statement. There are 2,500 acres under that ditch there. There are only 2,500 acres in the unit.

As I said yesterday, I was the only man who used that water for three or four years, and I said they had an expert irrigation farmer there. He came to my place every day because I was the only one using farm land. The other people were using it just for hay. He told me everything about it, how to use it and all that, and I tried to take an interest and tried to learn. As I said, I let my boy have 20 or 25 acres and I plowed 60 acres. I cultivate that much. We use that all the time. When it came down to harvesting we took the grain into market. I said that on that dry land it brought better wheat to me who has irrigated it and done the most work in there. I figured I had the best wheat that any dry land brings. I said the people are not talking about the ditch. As I said before, I can not say that the ditch is bad or good because I do not know enough about it yet.

Now the people at Fort Peck Reservation and I have not quarreled at all about the ditch, but I am not sent for that purpose; still I have a right to talk about. Those people made some mistakes.

The whole thing the Indians are kicking about is this money. They say, we get so much land or so much money and have the

surplus land. The Indians expect to get that money; they expect it to be paid to them, yet everything looks like it goes to that ditch, as Mr. Mitchell told you. He will tell you exactly what is right, what that money went for.

From about 10 years ago, when we made that treaty, we have not got a red penny for that land yet, for which we expect to be paid. We could use it. None of us people up there are farmers. We were not trained for farmers like white men. We are naturally stock raisers. We understand how to raise stock, which we do. We made a success of it before. When we had that reservation 80 miles long and 40 miles wide we all had lots of cattle. We understand how to handle them. We saved them. I had 75 head of cattle before the allotment myself, and then began losing to the big cattle outfit. The big cattle outfit ate us up at that time because the big fish eat the little ones. We did not have much. They gave us the allotments. The Government said, "We will give you your rights, we will give you all your rights." The right we want is pay for that land. When you give us the money we will get our rights. We always had that land and used it and traveled over it and hunted over it, and that was all the land we ever had. But the next thing is we want to get pay for it. Now we have to work to get our pay. This is our land—it is supposed to be our land—and we sell it to the white people, and yet we have to work for it again to get pay for our land.

The whole hitch is there. That is what we came here for. We are not coming to talk a great deal with you Senators at all. We came down here to lay our case before you so that you will fix it so that these people will get their money, so we can use it to better our conditions and homes. We are just as good as any farmers, but we have no implements and no plows and yet the Government says, "Go out and plow." We can not go out and plow with our fingers.

That is all I have to say at this time.

The ACTING CHAIRMAN. How much money have these people by virtue of the sales already made, Mr. Meritt?

Mr. MERITT. They have in the Treasury now from the proceeds of Fort Peck Reservation, \$524,959.56.

The ACTING CHAIRMAN. Now really, why do not these Indians get what is coming to them?

Mr. MERITT. We are making arrangements now to pro rate those funds.

Senator WALSH. But why was it not done long ago? When was the proclamation issued that the settlers were permitted to take the land?

Mr. MERITT. It was in 1910, I think.

The ACTING CHAIRMAN. It was later than that.

Mr. MERITT. The proclamation was issued July 25, 1913, the present proclamation. There were a little over a million acres of surplus land open to settlement—1,225,000 acres.

The ACTING CHAIRMAN. And that is appraised at about what? My recollection is about \$5 to \$7?

Mr. MERITT. Yes, sir.

The ACTING CHAIRMAN. So that means five to seven million dollars. The payment was deferred, however.

Mr. MERITT. Yes, sir.

The ACTING CHAIRMAN. And of the deferred payment half a million has been paid, and the first payments were made practically three or four years ago?

Mr. MERITT. Of course all the land has not been taken up by homesteaders.

The ACTING CHAIRMAN. I do not blame these people for getting impatient.

Mr. MERITT. I think myself that the money should be pro rated and distributed to the Indians, and that will be done.

The ACTING CHAIRMAN. Now, really, Mr. Archdale, that is what you are down here for, is it not?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. To get this money that is coming to you from the sale of this surplus land?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. What use would most of the Indians put that money to if they should get it?

Mr. ARCHDALE. There are three classes of people in the place I came from, Fort Peck. There are some turned loose, about 40 of them turned loose for citizens. That is another thing we came here for, this delegation of three, and I am glad you mentioned it, as we want the committee to consider it. She [indicating Mrs. Christine West] is a citizen. She is competent. She is just as good as any of the white men. She could transact her business, and she is turned loose. When the money is paid to her she will know how to use it. Those are the best people. Then there is the middle class that come from Indians who are not citizens, and those are old people.

The ACTING CHAIRMAN. You want the competent Indians to get the money that is coming to them?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. And as to the noncompetent Indians, what would you suggest with respect to their share?

Mr. ARCHDALE. Well, somebody will have to look after those people; somebody will have to look out for the old people, because they can not go out and work like I can. There will have to be somebody to attend to them and look after their property. That is my idea. But the competent Indians, who have the full right to have the money paid to them, we are walking ahead. It is not like it was 25 or 30 years ago. Every one of us is beginning to walk in the same paths that the white man walks. We have to do it, and we know how it is now.

A long time ago, under that 1886 treaty, we had \$165,000 a year for 10 years and rations, implements and stock, and all that. We had lots to eat. We had that big territory to use, to hunt, and everything else. Well, we did not have to work. Every one of us at that time had plenty. There was no white men around us. Even if we raised anything there was no market for it. We were living on that \$165,000, and living high. As soon as it came to an end the hard times commenced. We had cattle, as I said. The only thing we depended on was the shipment of cattle. As I said, we lost our cattle. We tried to farm, but we had no market like we have now; and I say, now we know what road to walk. The Indian who is raising hay or potatoes or anything like that just takes it into the market and we get cash for it—money.

That is the kind of people who want to get their money paid to them because they know how to use the money now themselves.

The ACTING CHAIRMAN. Are you a half breed?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. How many acres did you say you cultivate?

Mr. ARCHDALE. Sixty.

The ACTING CHAIRMAN. That is 60 acres under the ditch?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. Have you got some above the ditch?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. How many acres have you above the ditch?

Mr. ARCHDALE. I have a large family—four sons.

The ACTING CHAIRMAN. Your entire family?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. How much of that do you cultivate?

Mr. ARCHDALE. None at all.

The ACTING CHAIRMAN. You only cultivate under the ditch?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. As I understand you, you are not prepared to say to the committee whether the ditch is a good thing or is not?

Mr. ARCHDALE. That is what I said. I can not say.

The ACTING CHAIRMAN. You think it has not been demonstrated?

Mr. ARCHDALE. No, sir.

The ACTING CHAIRMAN. Now, let me ask you this: The water put upon the grain land you think causes an inferior quality of wheat to be produced; you can raise better wheat on dry land?

Mr. ARCHDALE. I do not understand that. I can not say either way. I have tried it a couple of times. We used that dry land. I thought I would get the best anyway, just the same.

The ACTING CHAIRMAN. Now let me ask you this: Is it not your opinion that more wheat can be secured off of land irrigated than nonirrigated land?

Mr. ARCHDALE. That puzzles me. I can not say either way.

The ACTING CHAIRMAN. Now, let me ask you this question: You know the irrigated region between Malta and Chinook on the Milk River?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. You have seen the great irrigating ditches there and the fields of alfalfa on the Milk River flat?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. And you know that well, do you not?

Mr. ARCHDALE. I have seen all that.

The ACTING CHAIRMAN. The point I am making is, what kind of crops do they raise down there on the land that they use?

Mr. ARCHDALE. Where, for instance?

The ACTING CHAIRMAN. Down on the Milk River between Chinook and Malta?

Mr. ARCHDALE. I never went through the fields. I could see from the trains the water all over there, but I never asked them what they raised, or how much.

The ACTING CHAIRMAN. You have seen their great hay fields there?

Mr. ARCHDALE. Yes, sir; I have seen them.

The ACTING CHAIRMAN. Alfalfa and blue joint?

Mr. ARCHDALE. Now, Senator, let me answer that. There is a part of my place where I have cut 40 tons of hay in that same 40 that I am using to-day, before there was any water put on there. Now, to-day I have 20 tons of hay, and I have irrigated it, and I can not see where the advantage is. I can prove that.

The ACTING CHAIRMAN. You think the water does not enable you to raise any more hay than if you did not irrigate?

Mr. ARCHDALE. Yes, sir; and other things I have to learn myself because I work it. As I say, I had 40 tons of hay there before it was under water. Now, I irrigated that right along and I got 20 tons of hay.

The ACTING CHAIRMAN. So at the present time you are not prepared to say whether the irrigating water is a good thing or is not a good thing as far as raising hay is concerned?

Mr. ARCHDALE. I can not say either way because I do not understand yet. I have to learn some more yet.

The ACTING CHAIRMAN. How many children have you?

Mr. ARCHDALE. I have six at home.

The ACTING CHAIRMAN. Do they go to school?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. Where do they go to school?

Mr. ARCHDALE. At Oswego day school—Indian school.

The ACTING CHAIRMAN. That is an Indian school, you say?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. Is there not a school near your place?

Mr. ARCHDALE. That is the nearest one—about $3\frac{1}{2}$ miles.

The ACTING CHAIRMAN. You mean $3\frac{1}{2}$ miles to the reservation day school?

Mr. ARCHDALE. Yes, sir; there is a public school at Oswego.

The ACTING CHAIRMAN. In the town?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. But your children go to the Indian school?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. Do you prefer to have them go to the reservation day school or would you rather they go to the public school?

Mr. ARCHDALE. I would sooner put them in the public school because they get better learning there. I have one boy there. My boy is 9 years old and I put him in there when he was 6. He does not know enough. He can not say his A B C's yet.

The ACTING CHAIRMAN. And he has been there how long?

Mr. ARCHDALE. Four years. Anybody who wants to see that boy I can go up there and I can show him to them. He has got so he can count 10; that is as far as he has reached.

The ACTING CHAIRMAN. You feel that they would be better off if they went to the public schools?

Mr. ARCHDALE. Yes, sir, because they would get better training and learn the English language right, and then they take after the white children—they will be better learned. But that school there, I do not go much on it.

The ACTING CHAIRMAN. Now, if it was not for the trouble you have about getting your money for the surplus land, would you think it was a good thing or a bad thing to have the white settlers come in among the Indians?

Mr. ARCHDALE. Well, we are not trying to keep the white people away from us. Some white people come in there and up mix with the people and that makes the country. That is the way I look at it.

Senator WALSH. And that is the way you would like to have them?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. You think, as far as that is concerned, the opening of the reservation is a great thing for the Indians?

Mr. ARCHDALE. It is all right; yes, sir.

The ACTING CHAIRMAN. But of course you want the money that comes from the sale to the white settlers?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. You feel, too, that a good deal of money has been wasted on this irrigation system?

Mr. ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. Up to the present time you are not quite sure that it is a good thing even for raising hay?

Mr. ARCHDALE. I do not know yet. That is what I want to find out—somebody who knows something about it to tell us. Of course, I can not prove it myself. I do not know enough about it yet.

Senator FERNALD. How long have you used it?

Mr. ARCHDALE. About four years.

Senator FERNALD. And you got just as good crops before the water was put on?

Mr. ARCHDALE. Yes, sir. Now, let me show you, at one place I could prove it by any of those white people that lived there. I put in 120 pounds of potatoes—I bought 200 pounds. They are big potatoes. We take the inside of it and we eat the inside. Part was peelings—120 pounds. I put in about 17 in a place about 100 yards long. There is no water on that. It is not irrigated, and I had five wagon-loads full of potatoes out of that dry land. My potatoes are as big as that [indicating], and the year before I put them in that ditch and I drowned them all out.

The ACTING CHAIRMAN. Is there anything further you desire to say?

Mr. ARCHDALE. No, sir.

(Mr. Archdale was thereupon excused.)

The ACTING CHAIRMAN. Would it interest you, Senators, to have Prof. Linfield come on the stand and tell us about the use of water for irrigation in this part of the country?

Senator CURTIS. I for one would be very glad to hear Prof. Linfield.

The ACTING CHAIRMAN. I understand Prof. Linfield is about to leave the city, and we will hear him and then hear any of these other Indians who desire to speak.

ADDITIONAL STATEMENT OF PROF. F. B. LINFIELD.

The ACTING CHAIRMAN (Senator WALSH). Professor, you are the director of the experiment station at the agricultural college at Bozeman, Mont., are you not?

Prof. LINFIELD. Yes, sir.

The ACTING CHAIRMAN. Do you know the country of which the Indians have been speaking, the Fort Peck country?

Prof. LINFIELD. Yes, sir; I have been through that country and stopped at Poplar, and held some farmers' institute meetings at Poplar. I have not been across the reservation. I have been around to Culberson and up north to Plentywood.

The ACTING CHAIRMAN. That is just to the west, is it not?

Prof. LINFIELD. It is up in this country here [indicating on map] I have been through this country here and along these railroads.

The ACTING CHAIRMAN. Just to the east of the reservation?

Prof. LINFIELD. To the east and up toward the north. I have been to Poplar and the agency.

The ACTING CHAIRMAN. Are you familiar with the country to the west, between Malta and Chinook?

Prof. LINFIELD. Yes, sir; I am acquainted with that country very well. I have been there a great number of times, and also the country north here [indicating] about 25 or 30 miles north of Malta.

The ACTING CHAIRMAN. Do you know about the use of water for irrigation along in Milk River Valley from Havre to Malta?

Prof. LINFIELD. Yes, sir.

The ACTING CHAIRMAN. I wish you would tell the committee, please, to what extent water is used for irrigation there.

Prof. LINFIELD. Along on the bottom land, where the people have water to use, they use it exclusively. In fact, there were no crops until within the past six to eight years grown in that country without irrigation water. The people did not suppose it was possible to grow crops without water, and all the land that was farmed in that country was farmed under irrigation up to probably six or eight years ago.

The ACTING CHAIRMAN. To what extent is dry farming conducted in that neighborhood?

Prof. LINFIELD. The whole country is taken up now. The first work that was done in dry farming in that country was down on the bench northeast of Harlem about 25 miles. We started a temporary substation there about 10 years ago.

The ACTING CHAIRMAN. Now where you can raise crops in that country without irrigation what do you want irrigation for?

Prof. LINFIELD. Simply for this reason, that on these bottom lands, which is heavy, they can grow—take, for instance, alfalfa, about 5 tons per acre. You can double the yield obtained without irrigation under average circumstances from one year to another. I am not saying that some years you can not get just as big crops without irrigation as with it, but dealing with the average time, one year or another, through an average of 10 years, they will practically double the yield, and they will get a crop every year on the irrigated land. Five tons of alfalfa is a possibility.

Now, this matter of small grass crops—the report is true, if you take native grass. I knew about the native grass down around Chinook. Probably when it was first started, and they began to get

hay, they got as much as a ton to a ton and half an acre. I have seen that land irrigated, and they continued to cut the hay until they did not get some years more than a quarter of a ton per acre. It was not the fault of the country. Right beside it there was some land that was growing 5 tons of alfalfa to the acre in three cuttings.

The ACTING CHAIRMAN. To what extent has irrigation been discontinued, if it has been discontinued at all, in that region since the possibility of raising grain without irrigation?

Prof. LINFIELD. It has not been discontinued, as far as those people are concerned, any more than in the Gallatin Valley.

The ACTING CHAIRMAN. How do they work the thing—to what use do they put water?

Prof. LINFIELD. It is largely used in the bottoms, and it is more largely used for growing alfalfa and hay, but in their rotation they plow up the alfalfa occasionally and seed to a crop of grain. By plowing up the alfalfa and seeding to grain, they raise the maximum crop of wheat, oats, and barley.

The ACTING CHAIRMAN. Now, going right back to Gallatin Valley, how is it?

Prof. LINFIELD. It is the same situation. Here is our proposition in Gallatin Valley. There is no land in Gallatin Valley—and they get in Gallatin Valley 19½ inches of rainfall, which is the largest rainfall of any section except in the extreme northwestern corner of the State—there is no land that was irrigated that is not irrigated at the present time in Gallatin Valley.

The ACTING CHAIRMAN. When agriculture first began in Gallatin Valley in the gold stampede days of 1864, was there any dry farming at all?

Prof. LINFIELD. No, sir.

The ACTING CHAIRMAN. It was all irrigated, was it not?

Prof. LINFIELD. Yes, sir.

The ACTING CHAIRMAN. And continued to be all irrigated until when?

Prof. LINFIELD. Well, there was not much dry farming until probably 20 years ago.

The ACTING CHAIRMAN. Has the use of water for the purpose of irrigation been to any extent diminished?

Prof. LINFIELD. No, sir; the fight over it is just as hard as ever, and a little bit worse.

The ACTING CHAIRMAN. The water rights suits are fought just as stoutly?

Prof. LINFIELD. Just as strenuously. There is another thought in regard to the permanency of agriculture under irrigation as compared with dry farming. Our philosophy in the Gallatin district is that we can not afford to grow grain unless we grow clover. On the irrigated land—I am speaking now of farming on the right methods and handling that land intelligently—the three grain crops, wheat, oats, and barley on the same land will cut my grain crop in half. I have tried it repeatedly.

I will give you an illustration. We had plowed up a field of 9 acres of clover that had been down two years in clover. I seeded that land to oats and it yielded us 115 bushels of oats to the acre, 40 pounds to the bushel. It was a good year for oats—a particularly good year. In that same field across the road I had a 5-acre tract,

and in working out my rotation, which is generally two years of clover and two years in grain, I had to crop for the third time to a cereal grain. This field had a crop of wheat on it followed the next year by barley, and this third year it was cropped as follows: Three acres of it was seeded to oats. Now, it was good soil, practically the same as that clover field right across the road, but it yielded only 53 bushels of oats to the acre. Right adjoining that, about 2 or 2½ acres in another piece, I seeded to barley; included in the same fields were 2 acres of barley, that the previous year had been cropped to peas.

Now, the 3-acre field, and the other which was in wheat and barley the two previous years, I seeded all together. I cultivated them in the very same manner, and used the same kind of seed absolutely. I noticed as soon as the grain came up that there was a big difference in the growth. I had the two fields cut separately, and that piece of pea land yielded 67½ bushels of barley to the acre, while the piece of land that had been cropped two years to cereal grain yielded 34 bushels of grain. In other words, my thought is if you are going to irrigate you must follow up some systematic process of rotation and built up your land.

Under dry farming we also get successful crops, but it is not as permanently successful and the yields are not as good, in my opinion.

The ACTING CHAIRMAN. Take a region like that which is under consideration, what relation does the irrigated land bear to the non-irrigated land; how does the existence of one affect the value of the other?

Prof. LINFIELD. They are in a measure complimentary, those adjoining at least. For instance, I will give an illustration. Let us suppose we have a section of land that is dry and we also have a section of land that is irrigated. I find, as a matter of fact, that in regard to the work and the use of my equipment I can make better and more efficient use of the equipment by having the two, simply swing back and forward from one to the other. In addition to that the dry farm is used for the grain, largely wheat and cereal crops, and for some pasture in the waste land. The irrigated land I used for forage, alfalfa and clover. Oats would be a little better under irrigation than on dry land.

The ACTING CHAIRMAN. Take this country out here, for instance [indicating]; could stock raising be carried on by farmers with the same degree of success if they did not have irrigated land?

Prof. LINFIELD. No, it could not be, simply for the reason that you can not grow large forage crops under dry farming. Even in the Gallatin Valley only one-half of the tonnage is possible under dry farming conditions, and in most parts of the country where we have tried alfalfa we can not get more than about one-third of the yield on an average of 10 or 12 years; we can not get more than one-third of the returns on dry land that we can get on irrigated land under like conditions. I am speaking of this country because I know it very well and I have tried it.

The ACTING CHAIRMAN. Now, without considering whether money has been wastefully expended in the irrigation system on the Fort Peck Reservation, what would you say as to the advisability or the policy of utilizing water to cover the bottom lands along the stream, as indicated upon the map which is before you?

Prof. LINFIELD. The scarce thing in Montana is the water supply. We never want any of it to get out of the country, and, according to my philosophy, the more land we can irrigate in Montana the better it will be for Montana agriculture ultimately.

It sometimes happens that land that is new and raw and sometimes a little heavy is not the best when it is first irrigated. It has got to be plowed up. The land is not dissolved because all preparation of plant food is a biological process. As a rule you have to crop that land for a year or two without getting the maximum. It should then be seeded to alfalfa, and after two or three years this should be ploughed up, after which good crops of grain are possible. In other words, it takes time to develop irrigated land. It is not true of all land, but it is true of much of the bottom lands that are irrigated.

Senator FERNALD. Just a question. Is alfalfa a good crop to raise as a money crop to be sold by farmers up there?

Prof. LINFIELD. Yes, sir, it is; at even \$5 a ton and 5 tons to the acre, and about a dollar a ton to handle the crop.

Senator FERNALD. Is it as good a crop as wheat?

Prof. LINFIELD. When you have it seeded down it is equally good as a money crop.

Senator FERNALD. I think you indicated the other day, but I have forgotten—is it true that wheat grown on dry farming land is of a little better quality?

Prof. LINFIELD. It is of a little better quality, unless you are careful in your irrigation. If you are careful in your irrigation, you can grow just as good quality of grain on irrigated land as the other, but the trouble is, the crop grows so well under irrigation, and you have supplied all the needs of the crop so completely that you produced a starchy grain. Now, if you will so irrigate your land—and this requires intelligent management and handling—if you so irrigate your land by irrigating properly and early, and then cut your crop a little early, you get the same quality as on the dry farm. In other words, you can get the same conditions by intelligent methods in the one case as you can in the other.

Senator FERNALD. It would take the people some time to learn, would it not?

Prof. LINFIELD. Yes, sir; under their conditions it is a simpler matter to handle dry farming. Often in dealing with farmers in a new community the same proposition is true—you have to start out with the young fellow. We have come to the conclusion in our work of extension that we have to start with the young people, and actually go down to the schools and get them interested in agriculture. That is the best way, we find, even with the white people.

The ACTING CHAIRMAN. We thank you very much, Professor. I may say here, Senator Fernald, that I have a friend at Harlan, right there [indicating on map] who owns a 160-acre tract in the valley on which he grows timothy. He has got to rotate with grain crops, say, every four or five years, and he figures on getting 2 tons of timothy hay per acre off that, which he ordinarily sells—he sells it, he does not feed it—at \$10 a ton.

STATEMENT OF MR. MARTIN MITCHELL.

Mr. MITCHELL. Mr. Chairman and gentlemen, I admit that ditches are good in the South, where the sun is hot; but the ditch is not a good thing in our country. We get more rain than we want. In our reservation the Indians furnish their hay. All they have to do is get sagebrush after they get the stock and they have more than they need. They hire farmers off the reservation to take it off for half, they have so much hay. We do not need any ditch.

Of course, Senator Walsh tried to compare our country with Chinook. I see they have ditches up there. They are raising good crops, alfalfa, and good hay, but they have to have a ditch because they are in a dry country. They do not get half the rain that we get in the eastern part of Montana. So we do not need any ditch. If we had a dry country like they have maybe we would talk about a ditch.

The ACTING CHAIRMAN. Do they have a weather bureau at Poplar?

Mr. MITCHELL. I could not say as to that.

The ACTING CHAIRMAN. Do they not keep a weather record at the agency there?

Mr. MITCHELL. Yes, sir; I guess they have one.

The ACTING CHAIRMAN. They do at Chinook, do they not?

Mr. MITCHELL. I do not know anything about that.

The ACTING CHAIRMAN. We can easily make a comparison and find out just exactly what the rainfall is.

Mr. MITCHELL. I know that it is lots different in that country. They have an awfully dry country, and it is windy—high land. But we are on the edge of North Dakota, and you know it is awful wet. We get the same climate as all the eastern part of Montana.

(Mr. Mitchell was thereupon excused.)

STATEMENT OF MR. JAMES ARCHDALE.

The ACTING CHAIRMAN. You are the son of the gentleman who testified here a while ago?

Mr. JAMES ARCHDALE. Yes, sir; he is my father.

The ACTING CHAIRMAN. You have evidently been to school?

Mr. JAMES ARCHDALE. No, sir; I have never been off the reservation. I was educated at the reservation school at Fort Peck.

The ACTING CHAIRMAN. At the reservation school?

Mr. JAMES ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. How old are you?

Mr. JAMES ARCHDALE. Twenty-eight years.

Mr. Chairman and gentlemen, I have listened to all this testimony that has been given by these various delegates from Montana, and in my opinion I believe that it is more or less of an objection we are trying to advance against the reclamation work on the reservation, and in a way I think I will favor that too. If I had the power and could use the language to protest against the construction of these ditches on the reservation, I would, and I am going to try to make a feeble effort.

The Indians always claim that they never agreed to the construction of these ditches in the treaty with Maj. McLoughlin, the repre-

representative of the United States Government, when he came on our reservation in 1907, and I have a copy of the minutes of the council there. Of course I have read the minutes, and I can find no place where Maj. McLoughlin ever put this proposition up to the Indians and they all agreed to it.

Senator CURTIS. There is nothing in the minutes to show?

Mr. JAMES ARCHDALE. There is nothing in the minutes. I have referred to it in several places and I can not find a place where they ever agreed to it, and it would seem that the Indians ought to be consulted before these ditches are put on their property, and by the way the things are going on now I think that from the conditions I have seen on our reservation I do not believe those Indians will have very much land left in about 10 years now because we are all applying for patents in fee, most of us on the reservation, and it would be a mistake for the Government to let the Indians have the patents in fee in view of the fact that we have a lot of money that we are going to get from the proceeds of the surplus land, and if we could only induce the Government to legislate so we could get some part of this money for the benefit of those Indians, I believe it would be a benefit to us if we did not have to sell any land.

The ACTING CHAIRMAN. Let me understand you. As I understand you now, because the Indians are not able to get their distributive share of the moneys received from the sales of the surplus land, they are all asking for patents in fee to their allotments so that they can sell them and get more money. Is that the idea?

Mr. JAMES ARCHDALE. Yes, sir; that is it.

The ACTING CHAIRMAN. You think the solution of the thing is not to refuse the patents in fee, and have a distribution of the moneys that have been received?

Mr. JAMES ARCHDALE. Yes, sir.

The ACTING CHAIRMAN. Excuse me for interrupting you.

Mr. JAMES ARCHDALE. That is all right, Mr. Chairman. I think if we could only have a provision in some law somewhere to get this money distributed to the Indians—the rightful shares—we would not sell so much land, and I think even if we did get a distribution of these shares pro rata, so that we could all get our shares, I do not think it would benefit us much for the reason that ultimately if you allow the Reclamation Service to construct all the contemplated ditches on the reservation we will also stand the expense of paying the construction charges for those ditches, which will amount to anywhere between \$1,600 and \$2,000, and we have done a little figuring, and I do not think there is much over \$3,000 that each Indian on the reservation is entitled to. If we did get a distribution of these shares and a credit to us, I do not think there would be much over \$1,600 left for the Indians to use.

Senator CURTIS. What about the plan that has been adopted on your reservation requiring only such parties as use the ditch to pay for it, and have that paid out of that party's fund?

Mr. JAMES ARCHDALE. That is a good requirement and is all right, but there is nothing that I know of that will prevent the construction of those ditches ultimately through the reservation. It has got to come sometime. The ditches will have to be constructed on the reservation and we will be compelled to pay for them. Take, for instance, my aunt's case. She has 40 acres under the ditch, and there

will be a charge of \$1,600, or between \$1,600 and \$2,000 against that ditch for construction charges. But from the way I understand the provision of the law affecting her rights, I think she will have to pay for those construction charges in 20 years' time from last year's Indian appropriation bill, or the year before, whenever that amendment was. But even if she did get her share she has got to pay back to the Government in 20 years' time the \$1,600, and on top of all that she has to pay taxes and water rights. I do not think the incompetent Indians, the old people, will ever be able to pay that \$1,600 unless you take it out of the proceeds of the surplus land, their share, and if the Government or the Reclamation Service thinks the construction of this ditch is going to benefit the Indians, I doubt it very much. I do not think it will benefit them at all because we were doing just as well without them, and never asked for them, and never agreed to the construction of that ditch. We never requested the legislation at all, and if the Government thinks that such legislation is going to benefit the Indians I do not see the reason why they do not consult us. We might take it up and consider it and give our views about it, but we were never given the chance.

I think that is about all, Mr. Chairman.

Senator CURTIS. Then in your judgment it would be a good idea, so far as the Indians are concerned, to abandon the ditch and do no more work upon it?

Mr. JAMES ARCHDALE. I do not understand you.

Senator CURTIS. I say, if I understand you correctly, you want the Government to stop work on the ditch?

Mr. JAMES ARCHDALE. Yes, sir; I do.

Senator CURTIS. And you think that would be for the best interests of the Indians?

Mr. JAMES ARCHDALE. Yes, sir; I think that is the almost unanimous sentiment of the Indians representing the Fort Peck Indians.

Senator CURTIS. Is it true that only one man of the tribe is working the land under the ditch?

Mr. JAMES ARCHDALE. That is true, all right. I have seen father work on the ditch, and everything he has said is true.

Senator CURTIS. He is the only man?

Mr. JAMES ARCHDALE. I have worked 20 acres of his land alongside of where he works his land. He got only nine acres where he irrigated and I have eleven.

Senator FERNALD. You farm dry?

Mr. JAMES ARCHDALE. Yes, sir; as near as I can I use the dry-land farming system.

Senator CURTIS. You heard this request yesterday that this money that is in the Treasury be placed to the credit of each individual Indian, and that those who were qualified to handle it have the money paid to them, did you not?

Mr. JAMES ARCHDALE. Yes, sir; I understand that.

Senator JOHNSON. It is true, is it not, that when the Government undertakes reclamation service, to put irrigation ditches through the Indian reservations, that the Indians are not consulted at all with regard to it?

Mr. JAMES ARCHDALE. Yes, sir; that is true.

Senator JOHNSON. That they are not consulted?

MR. JAMES ARCHDALE. No, sir; they are not consulted. That is the statement I made.

THE ACTING CHAIRMAN. How much of a place do you cultivate yourself?

MR. JAMES ARCHDALE. I have cultivated 40 acres last fall, plowing. We got 100 acres plowed up and right for seeding in the spring.

THE ACTING CHAIRMAN. You cultivate 100 acres?

MR. JAMES ARCHDALE. Yes, sir.

THE ACTING CHAIRMAN. Did you have a pretty good crop this last year?

MR. JAMES ARCHDALE. The year before last I raised a fairly good crop off of 40 acres.

THE ACTING CHAIRMAN. And you are going in just as strong as you can, apparently, for the next year?

MR. JAMES ARCHDALE. Yes, sir; I am about one of the first farmers out there to use the water on the reservation. We commenced to farm five or six years ago.

THE ACTING CHAIRMAN. Just where is your allotment?

MR. JAMES ARCHDALE. My allotment is just about 4 miles north of Milk River.

THE ACTING CHAIRMAN. You feel that you can make more money at farming there?

MR. JAMES ARCHDALE. Yes, sir; I do.

THE ACTING CHAIRMAN. Leaving out of consideration for the present the irrigation matter, how do you feel about the matter of the opening of the reservation and allowing the white settlers to come in there?

MR. JAMES ARCHDALE. I believe the Government never made any mistake in opening the reservation. That is all right as far as that goes.

THE ACTING CHAIRMAN. How do you figure that out; what makes you think so?

MR. JAMES ARCHDALE. Well, because my allotments are on the upper end of the reservation, near the reservation line, and I have been hauling my grain off the reservation to the elevators and marketing my grain out there, and I am associated a good deal with the white people, and they have told me a lot of things about farming that I could not find out on the reservation. They can show me lots of examples. It is better to associate with the white man who has experience than to associate with Indians who have no experience.

THE ACTING CHAIRMAN. You learn from them by association with them?

MR. JAMES ARCHDALE. Yes, sir.

THE ACTING CHAIRMAN. That is, so that you may understand their methods of living and the way they handle their affairs?

MR. JAMES ARCHDALE. Yes, sir.

THE ACTING CHAIRMAN. As well as cultivating their fields?

MR. JAMES ARCHDALE. Yes, sir.

SENATOR JOHNSON. Do you not think that for all purposes it would be better to open up the reservations in a satisfactory way so that the Indians may more freely mingle with the whites? Would it not advance them further than the reservation system as it now is?

MR. JAMES ARCHDALE. Yes, sir; it would. There is another thing I would like to call the attention of the committee to. I have had a

wife and children since the allotments were made on the reservation, and they each had 40 acres allotted to them, and those two 40 acres are under the ditch now. The ditches are constructed on the 40 acres. But both died several years ago, and it seems by the replies that we got from the office that since the tribal funds are not segregated and pro rated the heir of Indians who dies loses his interest in the tribal fund. If that answer is correct and it is right, I figure if I am entitled to three or four thousand dollars from my tribal fund and compelled to pay the construction charges against those two forties I might as well surrender all my share in the tribal funds and keep my forties; otherwise I will be compelled to sell those two forties, if that is right.

Mr. MERITT. That is the rule of the department, that the funds are not segregated, and when an Indian dies the heirs of that deceased Indian do not share in that fund specifically.

Mr. JAMES ARCHDALE. Yes; I understand that.

Mr. MERITT. He does not inherit the share of the deceased Indians in the tribal fund that he gets as a whole.

Mr. JAMES ARCHDALE. It refers to the tribe.

Mr. MERITT. But you will inherit the land of your wife and children.

Mr. JAMES ARCHDALE. I understand; that is clear enough, that part of it.

Well, I think that is about all.

STATEMENT OF MRS. CHRISTINE WEST, FORT PECK INDIAN RESERVATION.

Mrs. WEST. Mr. Chairman, in regard to the citizenship matter, I want to ask a question. Can an Indian be a full citizen and have the same rights and privileges as a white man and still be a ward of the Government and hold tribal rights? That is what I want to find out. And can we be made to pay taxes on our land where we have got our patent saying that that land was exempt from taxation for 25 years? I would like to have those two questions answered, if you please.

Mr. MERITT. An Indian may be a citizen Indian and at the same time have an interest in the tribal property of an Indian reservation. In other words, citizenship does not necessarily remove the wardship of the Government. In fact, under the general allotment act of 1887, any Indian who was allotted under that act became a citizen. That law was changed by the act of May 8, 1906, known as the Burke Act, which deferred the citizenship of the Indians until the issuance of a patent in fee. Even when a patent in fee is issued the Indian becomes a citizen, but he may still have an interest in the tribal property which has not been pro rated. Therefore an Indian can be a citizen and at the same time a ward of the Government and have an interest in tribal property.

Senator CURTIS. Now answer her other question. Tell her what of her property is taxable.

Mr. MERITT. The Indian's property may be taxable under this condition: When an Indian applies for a patent in fee a patent in fee is issued to an allottee; that allotment immediately becomes taxable, notwithstanding the provision in the original trust patent which says that it should be held for a period of 25 years free from taxation.

Senator CURTIS. But that is the only property taxable?

Mr. MERITT. If an Indian acquires property by his own efforts, which has not been issued to him by the Government, as the result of the proceeds of sale of trust property, that property also is taxable, but all property which has been issued to the Indian, known as trust property, is nontaxable and the proceeds from the sale of trust lands held by the Government for the benefit of the Indian are nontaxable. But all property for which the Indian has received a patent in fee is taxable the same as the property of a white man.

Senator CURTIS. Did you understand that, madam? Is that what you wanted?

Mrs. WEST. That is what I wanted to know; but in the treaty it says our property is exempt from taxation for 25 years.

Senator JOHNSON. Then, Mr. Meritt, explain that a little more fully, when it becomes taxable. She does not seem to quite understand you.

Mr. MERITT. If an Indian holds a trust patent to land, that land is not taxable until the expiration of the trust period, which is usually 25 years, unless the Indian in the meantime has been issued a fee patent to that land, then it becomes taxable immediately.

Senator WALSH. The treaty provides that the lands of the Indians shall not be taxable for a period of 25 years, and if the Indian chooses to leave his land that way it will not be taxable; but now an Indian comes along and asks that a patent in fee be given him and thereby he consents that his land may become taxable. It is in the Indian's own hands. He can leave his land so it will not be taxable.

Mrs. WEST. Will we be forced to apply for our patents? We did not want to become citizens until we had our full rights.

Senator WALSH. Because you did not get your distributed share of the money coming from the surplus lands?

Mrs. WEST. That is just it.

Dr. EASTMAN. But here is an additional question I want to ask. Every other citizen of the United States, of whatever race, becomes a citizen of this country on faith, on applying for citizenship. There is no property basis attached. Here is this Indian, you hold his citizenship on property. There is your whole constitutional law absolutely rubbish.

Senator CURTIS. But, Doctor, any Indian may become a citizen by his own efforts by adopting the life of an American citizen.

Dr. EASTMAN. Yes; but if I have some interest in the stock in a corporation that does not affect my citizenship.

Senator CURTIS. No, and it is not intended to under the law.

Dr. EASTMAN. Therefore the law is unfair to the North American Indian.

Mr. MERITT. Personally, I believe the Burke Act was a mistake; I think all Indians should be citizens of the United States, and I have always made that contention ever since I studied the question.

Senator JOHNSON. It provides, in substance, that no Indian may become a citizen of the United States until he first acquires patent in fee to his land, as I understand it.

Mr. MERITT. That is the terms of the Burke Act.

Senator JOHNSON. Now, the restriction that is placed upon him is not placed upon any foreigner in the world. He has got to first apply

and get a patent in fee for his land and commence paying taxes there he is allowed to become a citizen. There is the injustice.

Senator CURTIS. Or move to a different community and adopt the customs and habits of an American citizen; then he becomes a citizen.

Senator JOHNSON. Or move to a different community?

Senator CURTIS. Yes; leave the reservation.

Mr. EASTMAN. The point is here. No other citizen is required to get a fee patent, but he becomes a citizen on a bona fide application, without swearing that he is going to be true to the flag of this country, and so on. Whatever stock he has in a corporation anywhere, or whatever property he has does not cut any figure. Here you hold an Indian as to his property whether he should become a citizen or not.

This, I say, is unconstitutional.

Mr. MERITT. You may be interested to know that I called attention to that matter in a speech before the Mohonk conference in 1912 where I urged that the Burke Act should be changed so that all allotted lands would be made citizens. In other words, go back to the old law of 1887. And I might say there is also a serious legal question involved here as to whether or not if the matter were tested in the courts the land could be taxed where there is a trust period or any agreement with the Indians saying that the land shall not be taxed for a period of 25 years.

Mr. EASTMAN. That is a separate agreement.

Mr. MERITT. That question was fought out in a court in Oklahoma, the Supreme Court, I believe, in what is known as the Choate case, held that the lands could not be taxable under those conditions. Another question has never been tested by the courts and probably eventually be tested.

Senator JOHNSON. In other words, as I understand it, the Government imposes upon its wards, its subjects, a greater hardship and a higher barrier to overcome than it does upon any foreign citizens in this world that come to this country under existing law, because it requires two things he must do before he becomes a citizen; that is, get a receipt for his patent in fee for his land, which makes him immediately a taxpayer, or, as Senator Curtis says, he has got to get out and move, go somewhere else, to some other country that he may want to go, to some other part of the country.

Mr. WASSON. If I understand this question aright, the only benefit the Indian receives from taking his patent in fee under the Burke Act is the privilege of paying taxes. He is not allowed to vote.

Mr. MERITT. He becomes a citizen and if he complies with the laws of the State he may exercise the right of franchise.

Mr. EASTMAN. In other words, I have to give up all my tribal rights in order to be a citizen and make an investment, a material investment to the Government, before I become a citizen of the United States.

Mr. MERITT. No; you do not give up your tribal rights.

Mr. EASTMAN. But my land rights?

Mr. MERITT. You still have an interest in your tribal rights. But under existing law it will be necessary for you to apply for a patent in fee, and when a patent in fee is issued you will not get the benefit of nontaxation.

Mr. EASTMAN. But the Government agrees to exempt those lands for many years as nontaxable.

Mr. MITCHELL. Mr. Senator, here is the point. An Indian is turned just plumb loose, naked, and the country grabs him for taxes. But he has nothing at all to depend on. If they are going to turn us loose, why do they not give us our full rights and turn us loose and be done with us? That is my point.

Dr. EASTMAN. That is, give you all your money due you and all your lands that belong to you?

Mr. MITCHELL. Yes, sir.

Dr. EASTMAN. I agree with you.

Senator WALSH. In order to dispose of this Fort Peck matter, I offer the following resolution:

Resolved, That the committee requests the Commissioner of Indian Affairs to make immediate distribution of moneys in the Treasury of the Fort Peck Indians arising from the sale of their surplus lands.

Senator CURTIS. I think something ought to be added to that resolution: That he be directed to distribute all that is now in condition to distribute and that he prepare for us an act authorizing the department to distribute the balance of the money. There is some of this money that can not properly be distributed under existing law.

Senator WALSH. Make it "available for distribution"?

Senator CURTIS. Yes, that is right. In that same connection, I should like to have Mr. Meritt tell the committee how many million dollars there are in the Treasury of the United States to the credit of Indians that is not drawing interest. That I asked you for yesterday, you will remember.

Mr. MERITT. There is now about \$42,000,000 to the credit of the various tribes of Indians throughout the United States in the Federal Treasury, and my understanding is there is about \$11,000,000 of those funds not drawing interest.

Senator CURTIS. Mr. Meritt, will you at your earliest convenience supply to the committee, through the proper channel, a bill with the proper recommendation authorizing the distribution of that fund, so that it may be placed in local banks or in other ways disposed of so it may draw interest?

Mr. MERITT. The committee, yesterday, requested me to bring to the committee a draft of legislation which would authorize the distribution of the funds of the Blackfeet, Flathead, and Fort Peck Indians, and other tribes of Indians that have funds in the Treasury that could not be distributed under existing law, and I have a draft here covering that.

Senator WALSH. Before you reach that I have amended my resolution to read as follows:

Resolved, That the committee request the Commissioner of Indian Affairs to make immediate distribution of moneys in the Treasury of the Fort Peck Indians arising from the sale of surplus lands available for distribution, and that he submit to the committee a draft of legislation necessary to accomplish the distribution of all such funds as payments are made.

Mr. MERITT. I have the draft of the proposed legislation here, Mr. Chairman.

Senator WALSH. Then the resolution is considered as adopted?

The CHAIRMAN. It is agreed to in the absence of objection.

Senator CURTIS. If necessary, Senator Walsh, if the commissioner will not act under his present authority, I think we ought to have a general resolution that all the funds in the Treasury that are sur-

centible to division should be divided and placed to the credit of individual Indians so it will begin to draw interest. I think the commissioner promised the other day that would be done.

Senator WALSH. Let us first dispose of this.

Senator CURTIS. That is already disposed of.

Senator WALSH. Let us take up the matter of the legislation and then we can modify it.

Senator CURTIS. The assistant commissioner did not make that promise, but my understanding was from the commissioner that they were taking steps looking to that end. I would not say it was a direct promise, but it should be done at least, and if the resolution is necessary I think we ought to pass it, because it is an outrage that so many million dollars are absolutely lying idle in the Treasury.

Senator JOHNSON. Mr. Meritt, can you tell us about how much money belonging to the Sioux is lying here in Washington, approximately?

Mr. MERITT. Yes, sir.

Senator FERNALD. You heard that resolution. You understand that?

Mr. ARCHDALE. I heard it.

Senator FERNALD. I wish, Senator Walsh, you would repeat the resolution slowly, so he may thoroughly understand it.

Senator WALSH (reading):

Resolved, That the committee requests the Commissioner of Indian Affairs to make immediate distribution of moneys in the Treasury of the Fort Peck Indians arising from the sale of their surplus lands available for distribution, and that he submit to the committee a draft of legislation necessary to accomplish the distribution of all such funds as payments are made.

This resolution directs the Secretary to distribute the money that is in the Treasury now from the sale of these lands, assigning his share to each individual Indian. He tells us that there is a portion of the fund which can not be distributed to the individual Indians for the want of necessary legislation, and so he is asked to draft a bill which will give the commissioner the necessary authority to make the distribution of these funds. As the law is now, as I understand the commissioner, all these funds are put into one common fund, and while the commissioner is authorized to expend these moneys for the common benefit of all the Indians; for instance, to support the schools and hospitals and other expenses of the reservation, and so on, he has not any right under the present law to set apart to each individual Indian his share, and we are instructing him to frame a bill at once so that that authority may be given. Then the money of each individual Indian will be deposited in the bank to his credit and it will draw interest. In the case of the competent Indian, the citizen Indian, I suppose that money will be paid over to him. In the case of the incompetent Indian, it will be held subject, of course, to the order of the commissioner for his use.

Senator CURTIS. Is that satisfactory?

Mr. ARCHDALE. Yes, that is clear enough. But it seems it ought to include all revenues derived from the reservation, too.

Senator CURTIS. That would be the same thing, the revenues.

Senator JOHNSON. What does he mean by revenues?

Senator CURTIS. What they get from other sources. They already have authority under the law to distribute the other.

Senator WALSH. Senator Curtis, if we are through with that, it seems to accomplish the purpose?

Senator CURTIS. I think it does.

Senator WALSH. If satisfactory, I will introduce this on Monday.

Mr. MERITT. That was drafted in the office in compliance with the instructions of the committee. It has not yet passed through the hands of the Secretary of the Interior, but I believe—

Senator WALSH. I can introduce it here and it will be referred.

Mr. ARCHDALE. Does it include the revenues that we derive off the reservation in the bill as drafted?

Senator WALSH. There are no other revenues, are there?

Mr. ARCHDALE. We have been leasing our surplus land to stock companies and we have been deriving revenue from it.

Senator CURTIS. That can be done under existing law. It is now authorized under existing law to distribute that money. It is just this money here that comes under this particular act of Congress, and this will make it all available.

Mr. ARCHDALE. All right.

Senator JOHNSON. Let me repeat a question that I asked Mr. Meritt a little while ago, the answer to which was interrupted. I should like to know how much money the Sioux Tribe of Indians has here in Washington, as near as you can give it to me.

Mr. MERITT. I can give this information to you as of July 1, 1916, the beginning of this fiscal year.

Senator JOHNSON. What is the amount?

Mr. MERITT. The Cheyenne River Sioux have in the Treasury \$940,221.94; the Crow-Creek Sioux, \$115,827.46; the Lower Brule \$55,272.55; the Time Ridge Indians, \$667,553.62; the Rosebud Indians, \$2,823,413.64; the Sisseton and Wahpeton Indians, \$605,915.49; the Yankton Sioux, \$227,177.03. This information is contained in House Document No. 1453, Sixty-fourth Congress, second session.

Senator JOHNSON. Have you the totals?

Mr. MERITT. I have not the grant total.

Senator CURTIS. Mr. Chairman, one of the Fort Peck Indians tells me that they would like to go home to-night, and I would like to know whether or not the Senators have any more questions that they want to ask them.

The CHAIRMAN. Is there any member of the committee who wishes to ask any questions of these Indians?

(There were no questions.)

Senator WALSH. They were solicitous about the meeting of the expenses of their trip here. I think they have been exceedingly helpful to us and have presented something of substance. Could you tell us, Mr. Meritt, what the attitude of the office would be toward meeting their expenses?

Mr. MERITT. If it is the wish of the committee that their expenses be paid out of traveling expenses, we will be glad to see that it is done.

Senator WALSH. I move, then, that the commissioner be requested to pay the necessary expenses of the delegation from the Fort Peck Reservation.

(The motion was agreed to.)

Mr. MERITT. Senator Walsh requested, on yesterday, that I bring to the committee a draft of legislation which would enable the Fort Peck Indians to take allotments within the whole area; and I have that draft here.

Senator WALSH. That is, the draft of the amendment to the pending bill?

Mr. MERITT. Yes, sir. It is suggested that Senate bill 4761 be amended by the addition of the following:

SEC. 5. That Indians of the Fort Peck Reservation, Montana, entitled to allotments under existing laws may select lands classified as coal, and receive patents therefor in accordance with the act of May thirtieth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page five hundred and fifty-eight), with a reservation, however, of the coal deposits in the lands allotted, and of the right to prospect for, mine, and remove the same.

That would simply give the Indians the surface right.

Senator CURTIS. Would it not be better, Mr. Commissioner, to add in the first part of that, that they be allotted the surface rights—"may select the surface of the lands classified as coal and receive patents?"

It reads there as if they might be called upon for an explanation. That is just a suggestion for Senator Walsh, or whoever offers the amendment.

Senator WALSH. "Select the surface" instead of "select the lands?"

Senator CURTIS. Yes.

Senator WALSH. I think that is the language that is usually employed.

Senator CURTIS. Very well, that will be satisfactory to me.

Senator WALSH. But, Mr. Meritt, the act itself gives that right to homesteaders, does it not? That is, the bill as it has been reported?

Mr. MERITT. Yes, sir.

Senator WALSH. Why duplicate the language? Why not make the language exactly the same and make the provisions applicable to both the homesteader and the Indian allottee?

Mr. MERITT. The Indian allottee occupies a little different status on the reservation from the homesteader.

Senator WALSH. I ask that the committee recommend to the Senate the amendment proposed by the department.

The CHAIRMAN. If there is no objection that will be agreed to. You will report the bill?

Senator WALSH. Yes, it is my bill, is it not, Mr. Meritt?

Mr. MERITT. Yes, sir.

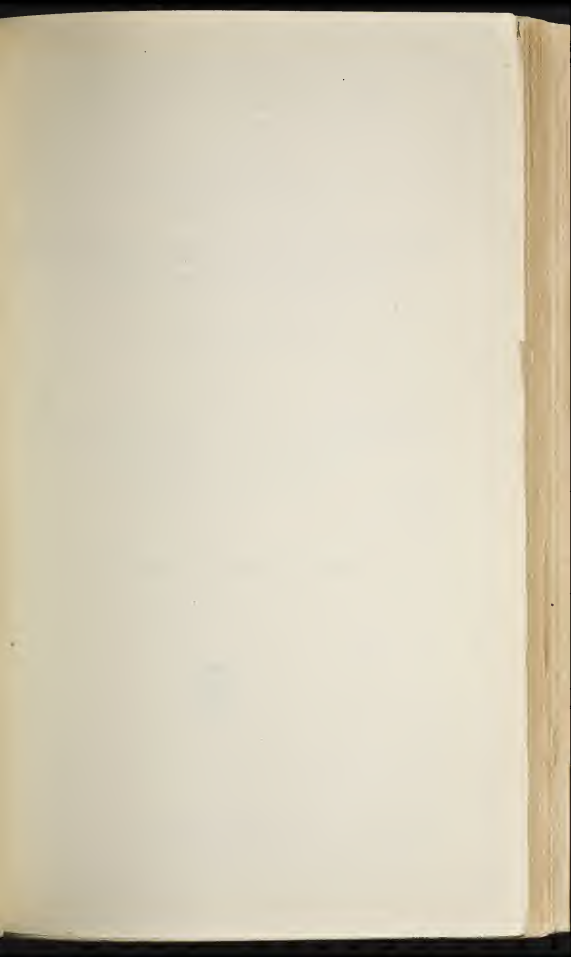
Senator JOHNSON. Mr. Chairman, if there are no other Fort Peck people here who want to testify, I want to bring up a question that has been in my mind for a long time, with regard to these investigations, or with regard to the troubles as testified to by a good many people, and to ask this committee if they do not think that we ought to have a legislative investigating committee selected or appointed, entirely independent of any other manner of investigating these various charges. I have been here only a short time, it is true, but it does not seem to me as though our committee is getting anywhere in the investigation of these various charges relating to irrigation matters and all other matters that have come before this committee. It looks to me, with the present system, that when a

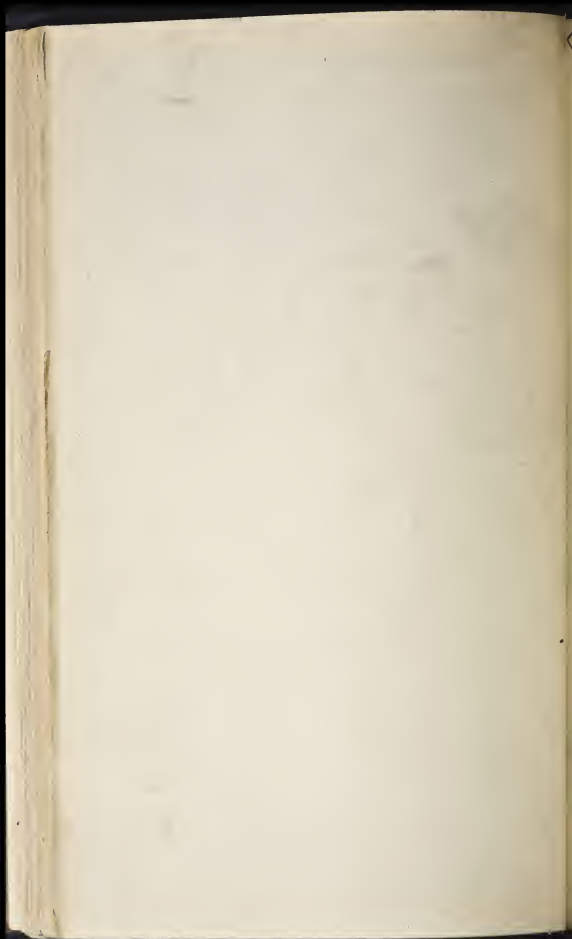
charge is made to this committee that goes through the Indian Department (which it naturally will), the process by which they make these investigations simply amounts to the department investigating itself. It was shown here the other day and acknowledged, in connection with this Crow-Creek matter, that charges had been preferred against some of the employees up there, and were considered strong, and had been sent to the Indian Office almost a year ago, and that those charges had been sent back to the superintendent almost a year ago, and that nobody had heard from them since.

I just wanted to bring that before the committee for its consideration.

(Thereupon, at 1 o'clock p. m., the committee adjourned until Monday, February 19, 1917, at 10.30 o'clock a. m.)

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Revised.
DIVERSION DAM ON THE GILA RIVER AT
A SITE ABOVE FLORENCE, ARIZ.

EXCERPTS

TO BE USED BY THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

SECOND SESSION

RELATIVE TO

A PROVISION IN THE INDIAN APPROPRIATION BILL PROVIDING
FOR THE CONSTRUCTION OF A DIVERSION DAM AND NECES-
SARY CONTROLLING WORKS FOR DIVERTING
WATER FROM THE GILA RIVER AT A
SITE ABOVE FLORENCE, ARIZ.

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Printed for the use of the Committee on Indian Affairs



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DIVERSION DAM ON THE GILA RIVER AT A SITE ABOVE FLORENCE, ARIZ.

ITEMS ON GILA RIVER AS AGREED TO IN CONFERENCE ON INDIAN APPROPRIATION BILL, MARCH, 1915.

For beginning the construction of a dam and necessary controlling works for diverting water from the Gila River for the irrigation of Indian land and allotments on the Gila River Indian Reservation, Ariz., as recommended by the Board of Engineers of the United States Army in paragraph 217 of its report to the Secretary of War for February 14, 1914 (H. Doc. No. 791), \$50,000, to remain available until expended, reimbursable as Congress may hereafter provide, the total cost not to exceed \$160,000.

For beginning the construction of a dam and necessary controlling works for diverging water from the Gila River at a site above Florence, Ariz., for the irrigation of Indian land and allotments on the Gila River Indian Reservation and private lands in Pinal County, Ariz., as estimated by the Board of Engineer Officers of the United States Army in paragraph 138 of its report to the Secretary of War, of February 14, 1914 (H. Doc. No. 791), \$75,000, to remain available until expended, reimbursable as Congress may hereafter provide, the total cost not to exceed \$175,000: *Provided*, That before beginning construction the Secretary of the Interior shall prescribe such rules and regulations and take such other action as in his opinion may be proper and necessary for the purpose of securing for the Indians of the Gila River Reservation the benefits from such work to which they are legally and equitably entitled, and to enable the United States to control the diversion and distribution of water by said works and canals receiving water diverted thereby, and he may require of the owners of other lands to be benefited thereby agreements for the payment of the charges which he is hereby authorized to fix for diversion of water by said dam.

EXTRACT FROM SENATE REPORT NO. 1022, SIXTY-THIRD CONGRESS, THIRD SESSION.

BEGINNING THE CONSTRUCTION OF DAM ON THE GILA RIVER AT FLORENCE,
ARIZ. (REIMBURSABLE).

(Bill, p. 22, line 21.)

No estimate; not allowed by House; allowed by committee, \$75,000.
Senate hearings, pages 498-506. The statements of Hon. Carl Hayden, Member of Congress for Arizona, showing the recommendation

of the Secretary of the Interior. relate the fact that late in January of this year the Gila River experienced the most disastrous flood in its history, and all of the headings of the various canals above Florence have been washed away. The water rights owned by the Indians it is necessary for the Government to protect, and as white farmers may find means to restore the devastated headgates and canals, it may become necessary for the Government to oppose such a step in order to protect the Indians. The construction of the dam at this point has strategic value in protecting the rights of the Indians. On page 500 of the Senate committee's hearings will be found Mr. Hayden's statement justifying the appropriation. The committee recommends the appropriation.

EXTRACTS FROM THE HEARINGS BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS, THURSDAY, JANUARY 28, 1915.

(P. 498, Senate Hearings.)

STATEMENT OF HON. CARL HAYDEN, A REPRESENTATIVE FROM THE STATE OF ARIZONA.

Mr. HAYDEN. Mr. Chairman and gentlemen, I presume that the best way to proceed would be to read the amendment and the letter of the Secretary. The proposed amendment is as follows:

For beginning the construction of a dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Ariz., for the irrigation of Indian land and allotments on the Gila River Indian Reservation and private lands in Pinal County, Ariz., as estimated by the Board of Engineer Officers of the United States Army in paragraph 138 of its report to the Secretary of War of February 14, 1914 (H. Doc. No. 791), \$75,000, to remain available until expended, reimbursable as Congress may hereafter provide, the total cost not to exceed \$175,000.

The CHAIRMAN (Mr. Ashurst). The Secretary of the Interior has made the following report on that amendment:

DEPARTMENT OF THE INTERIOR,
Washington, January 28, 1915.

MY DEAR SENATOR ASHURST: I have received your communication of January 19, 1915, requesting report upon a proposed amendment to the Indian bill making an appropriation of \$75,000 for beginning the construction of a dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Ariz., for the irrigation of Indian land and allotments on the Gila River Indian Reservation and private lands in Pinal County, as estimated by the Board of Engineer Officers of the United States Army in its report to the Secretary of War, page 46, paragraphs 136-138, House Document 791, Sixty-third Congress, second session.

This report describes the situation with regard to the diversion dam which it will be necessary to construct in order to utilize the waters of the Gila River when the San Carlos Dam is built. However, the usefulness of this diversion dam does not depend entirely upon the construction of the San Carlos Reservoir, because for many years past considerable areas of land have been irrigated by diversion through various headings of the flood flow of the Gila River above Florence. To irrigate the lands of the Prima Indian Reservation upon the south side of the Gila River at the upper or eastern end of the reservation will require the construction of such a dam in order to conserve the flow of the river to as great an extent as possible.

The proposed site, about 12 miles above Florence, is at the mouth of a series of canyons through which the river flows uninterruptedly from San Carlos, but from this point on the river course is through a broad flat valley with an immense river bed consisting of broad deep deposits of silt and gravel. When the flow of the river is low, and when, of course, water is most valuable, the stream disappears entirely soon after emerging from the mountains above Florence.

Aside from the use which the Indian reservation may eventually make of this diversion dam, practically all of the landowners off the reservation who have been irrigating in this vicinity may receive their supply of flood water from this point of diversion.

The Gila River has just experienced one of the most disastrous floods in its history, and all the headings of the various canals above Florence have been washed away, and the earth covering through which these canals ran has been entirely removed, so that these channels can not be again constructed. The superintendent of the reservation reports also that at least one canal heading for the Indian reservation, on the south side of the river, is washed out, and the large canal known as the Little Gila has been very badly damaged. The land which this canal supplies with water could be reached from channels heading at the diversion dam which it is proposed to build, and when so supplied would be past all danger of future damage or destruction.

The white owners who have suffered by the recent floods might possibly secure means of constructing a dam at the point mentioned, thus insuring to themselves immunity from a recurring flood, but it might be necessary for the Government to oppose such a step in order to protect the water right now claimed for the Indians.

While there is no doubt but that, as a matter of law, the Pima Indians have a prior right to the waters of the Gila River as against all other appropriators on that stream, yet they have not been receiving a sufficient quantity of water to irrigate their lands for lack of the physical means of obtaining the same. The construction of a diversion dam at this point will give the Indians an advantage of location that they have not heretofore enjoyed, because the Government of the United States will thus actually control the only feasible point where the waters of the Gila may be diverted. The Indians are entitled to control this strategic position in order to adequately preserve and perpetuate the Government's claim to water in their behalf, and for this reason alone, whether the San Carlos Reservoir is ever constructed or not, this appropriation is amply justified.

The cost of the diversion dam itself is estimated by the Board of Army Engineers as \$150,000, and an additional item of \$25,000 should be included in order to make the necessary excavation through the rock heading, so that connection may be made with the present canal systems of the Florence district. The site of the proposed diversion is an ideal one compared with others along the Gila River, as on both sides of the river are massive outcroppings of rock. The river bed is comparatively narrow and confined between hills to this one channel, and a railroad upon which to bring in supplies and material parallels the river at this point, so that the cost would be the minimum for such work. The railroad track is high enough above the river so that no interference with its operation will result even after the dam is built. The dam will not be high enough for storage purposes, but simply a low weir a few feet above the normal surface of the river, so that water may be properly diverted into the canal, and that all of the flow at the low stages, when the water is most valuable and which occur for long periods, may be available.

It is recommended that the proposed amendment receive favorable consideration by Congress.

Cordially, yours,

FRANKLIN K. LANE.

Hon. H. F. ASHURST,

Chairman Committee on Indian Affairs, United States Senate.

Mr. HAYDEN. Mr. Chairman and gentlemen, the first I heard about this matter was by telegram that I received from Florence, Ariz., stating that a great flood had gone down the Gila River a little over three weeks ago, entirely destroying the headings and carrying away all the earth that lay in the river bed between the rocks on each side, where the white people formerly had their canals. There has been

a conflict of interest between the people at Florence and the Pima Indians over the use of this water, but the calamity which came by reason of this flood and which placed these people in such shape that they can not help themselves at present—

Senator TOWNSEND. What people do you mean?

Mr. HAYDEN. I mean the white appropriators on the stream above the Indian reservation. This dam is located about 18 miles above the reservation line. There is an irrigated district between the Indian reservation and this dam site. It struck me that, with the white people willing to cooperate with the Government, now was the psychological time to secure this dam site for the benefit of the Indians. As the report properly states, there is no doubt about the Indians having a prior right to the use of water on this stream. You could go to court and get a decision saying that the Pimas had this prior right above all other appropriators, but it would not produce as much moisture for the Indian lands as might be found in the inkwell of the judge who signed the decree, because they have no way to get it.

If the Indians were compelled to receive their water through the river bed a mile or two wide, consisting of sand and gravel, before the water could get down to the reservation there would not be any water in the river. This site is the first place in the stream above the valley proper where the hills come down so that you can actually control the river. Because all the interested parties are now agreeable, I suggested, after talking it over with Senator Ashurst, that it would be proper to introduce this amendment.

If the San Carlos Reservoir is ever constructed this dam will be an integral part of the project and, in my opinion, would become as valuable as the reservoir itself. I live on the Salt River project, about 50 miles from this place, and I speak advisedly when I say for the farmers there that if you asked them whether they preferred to have the Roosevelt Reservoir and depend on the old method of diversion by brush dams or the permanent diversion dam at Granite Reef and do without the reservoir, they would all say that the diversion dam gave much more service considering the comparative cost of the two structures.

I was born in an irrigated district under the Tempe canal, which has a maximum capacity of about 20,000 miner's inches. The average flow to which the canal is entitled is about 4,000 miner's inches of water. With this large canal whenever a flood comes, if the dam holds, they can irrigate the entire district during the few days that the flood lasts. But, if the flood washes the diversion dam away, it can not be repaired until the water goes down. As a matter of fact, farmers have lost more by floods than they have by drought under the Tempe canal.

So that a permanent diversion dam at this point will produce a flood-water supply sufficient for the irrigation of the Indian lands now cultivated on the south side of this stream and the private land that is irrigated in that vicinity.

The advantage of having this dam built by the Government is that when the Government controls the site the Indian will get the benefit of his prior right to use the flow of the Gila River. If there is any surplus water it can be given to those entitled to it.

Senator TOWNSEND. Do you take this appropriation out of the Indians' money?

The CHAIRMAN. It is reimbursable as Congress may hereafter provide.

Mr. HAYDEN. We have followed the language as used in another proposed amendment for the construction of a dam on the Pima reservation. The reimbursable feature can be worked out in two ways by the Secretary of the Interior—

Senator CLAPP. You have not answered the question. This does come out of the Indians' fund at all, does it?

Mr. HAYDEN. There is no Indian fund.

Senator CLAPP. It is an appropriation out of the Treasury of the United States.

Mr. HAYDEN. It is an appropriation by the Federal Government. There is no Indian tribe in Arizona that has any fund to its credit in the Treasury. They are the poorest Indians in the United States. I will say, further, that the Pimas are the best Indians in the United States.

Senator ROBINSON. You do not undertake in your amendment to set forth the manner in which it shall be reimbursed; you leave that to future legislation.

Mr. HAYDEN. For this reason—it perhaps could be handled in two ways; either the whole charge made against the Indians' lands and a charge the private landowners, as is done in the Reclamation Service, for furnishing water on a rental basis. Or the Secretary might, without difficulty, agree with such private landowners that they shall pay their part of the construction cost. Whether it is advisable to proceed by one method or the other I can not tell. However, I have no doubt but that the Secretary would be able to work out the proposition out.

Senator ROBINSON. What do you contemplate will be the cost?

Mr. HAYDEN. Under the estimate of the Board of Army Engineers it will cost \$150,000 to construct this dam. The Indian Office recommends an additional appropriation of \$25,000 in order to take care of the rockwork made necessary because the earth has washed away where the canal headings were formerly located.

Senator ROBINSON. That makes \$175,000?

Mr. HAYDEN. Yes, sir.

Senator CLAPP. The total cost at this time is \$75,000 and the limit on the total cost would be \$175,000?

Senator ROBINSON. Yes; that is what he said.

The CHAIRMAN. In the letter of the honorable Secretary of the Interior which I have just read the Secretary makes reference to paragraphs 136, 137, and 138, of House Document No. 791, Sixty-first Congress, second session. It will be remembered that our committee appropriated \$25,000 for the purpose of causing this investigation to be made, and a very complete investigation was made and a report made to the Secretary of War, and it is included in House Document No. 791, and the diversion dam is there discussed in the following language:

At the several sites for a diversion dam ledge rock is found at one or two points, but investigation has shown that toward the center of the rock is not within practicable reach. However, for the lift desired, not exceeding 10 feet, a dam of the Indian type will answer.

137. Through the courtesy of Mr. G. S. Binkley, member of the American Society of Civil Engineers, the board has been able to consult the design for a diversion dam for this place prepared by the late Mr. J. D. Schuyler in 1911 and a later design prepared by Messrs. Schuyler and Binkley.

138. From a consideration of these designs and the quantities of materials required for a dam following the second design the board is able to state that the cost of the diversion dam, including head gate and silt sluice, need not exceed \$150,000.

Mr. HAYDEN. I should just like to say in conclusion, Mr. Chairman, that the fact that private land will be benefited by the construction of this dam ought not to deter the committee from making the appropriation. You have here a given water supply of which beneficial use can be made by irrigating a certain area of land lying below it, a part of which is in private ownership and the balance in the Indian reservation. If the entire cost is placed upon the Indians it might be prohibitive, but there is no reason why the Secretary can not apportion part of that cost to the private land that would be benefited.

I look at this proposition in this way: Here we have Indians on a reservation and we have white people living beside them. Both races are going to be there for all time to come, and the sooner they make up their minds to this fact the better it will be for all concerned. They have a community of interests, because they must obtain their water for irrigation from a common source of supply. If they entered into this mutual arrangement, the rights of the Indians can be fully protected by the Secretary of the Interior.

Senator TOWNSEND. Do you think the Indians will use this water if you give it to them?

Mr. HAYDEN. There is no question about that. They irrigated their lands before the white people ever came there. They grew cotton and wheat and corn, and were prosperous until the time the white settlers higher up on the stream took the water away from them. They are the best agricultural Indians in the United States. They are progressive and will accept instruction in agriculture by the department officials. They are growing Egyptian cotton on that reservation now at a profit of from \$50 to \$80 an acre. There is no question about the climate or soil or anything else. They only need a water supply, and they need it badly, to continue their development.

Senator TOWNSEND. It is a project that is primarily in the interest of the Indians, is it?

Mr. HAYDEN. There is no question about that, otherwise I would not appear before your committee.

Senator LANE. How many acres of Indian land will be irrigated; do you know?

Mr. HAYDEN. There is more land on the reservation that could be irrigated than there is available water in the Gila River.

Senator LANE. How much will they irrigate?

Mr. HAYDEN. I think on the south side of the stream there is available for irrigation some 15,000 or 20,000 acres.

Senator LANE. How much land of the whites will be irrigated?

Mr. HAYDEN. There are about 8,000 acres under irrigation at present.

Senator TOWNSEND. Are there any of the Indians' lands under the canals?

Mr. HAYDEN. Yes, sir.

Senator TOWNSEND. How much?

Mr. HAYDEN. All lands have to be under canals in order to be irrigated.

Senator TOWNSEND. I know it has to be, but is it now?

Mr. HAYDEN. Considerable areas are now irrigated.

Senator TOWNSEND. The white man's land is under the ditch now, is it?

Mr. HAYDEN. Yes, sir; but the Indians' diversion is below the white diversion, and the passage of this amendment will carry the Indian diversion up the river, so that he will get an equal chance to obtain his share of the water.

Senator TOWNSEND. Are you providing any appropriation for digging a ditch for the Indians, so that they can get the water on their lands?

Mr. HAYDEN. The waterways are at present constructed from the dam itself down to the vicinity of Indian country. That would necessarily be a part of the arrangement between the Secretary of the Interior and the landowners turning over these ditches or the use of them in consideration of the delivery of the proper quantity of water to their lands.

Senator LANE. Do these 8,000 acres belonging to the whites lay above the 17,000 acres?

Mr. HAYDEN. Yes, sir.

Senator LANE. And this water which they would divert into the canal would first pass the 8,000 acres of the white men?

Mr. HAYDEN. Yes, sir; it would first pass the lands.

Senator LANE. And the Indians would get such water as came by the land of the whites?

Mr. HAYDEN. If the United States controls the only point of diversion and controls the waterway down to the Indian reservation, the Indian undoubtedly will get his water. If that site was controlled by private individuals and there should be some suit at law, the court would decree that they must turn some of that water to the Indians. They would turn it down the river bed full of sand and gravel, and the Indians will never get it. So this amendment will give them, as the Secretary of the Interior points out, the strategic advantage to which they are entitled in this situation.

The CHAIRMAN. You referred to the fact that these lands were irrigated years ago. Page 11, paragraph 23, of this report of the Board of Army Engineers, is in part as follows:

For a number of years the United States has been and still is rapidly disposing of the land along the river, it being well known that these lands have no value unless water is taken from the stream, and it has been equally apparent that by this action the Indians would be pauperized by being deprived of their only means of support.

Public attention has been called to this matter from time to time. * * * Meanwhile it is asserted that the Indians, learning to depend upon the Government for food and clothing, have been rapidly losing their capabilities for self-support and are becoming a permanent charge and source of annual expense. If they are to be kept from further degradation, it is necessary that prompt action be taken toward enabling them to practice some means of self-support. This is possible only by securing to them the means of obtaining an ample supply of water.

Senator TOWNSEND. I understand from the statement of the Secretary and the admission of Congress that the Indians are entitled to the first right to this water. Are they entitled to water for the whole of their land?

Mr. HAYDEN. I do not think there is any doubt about their prior rights to water as a matter of law.

Senator TOWNSEND. That is, it would take all of this water to irrigate all of their lands, would it not?

Mr. HAYDEN. During the low stages of the river; yes. This is a flood-water proposition. When the river is in flood there is ample water for the Indian lands and all the white man's lands. When the river goes down there is not enough for anybody. The Indians obtain an auxiliary supply by pumping.

I want the committee to understand this flood-water proposition. When a flood comes on that stream it generally lasts three or four days. With a permanent dam that can not be washed out and a canal of ample capacity, the Indians and the farmers can irrigate the whole of that country during the course of that flood.

Senator TOWNSEND. By the course of that flood do you mean the dry season?

Mr. HAYDEN. No; we have two rainy seasons in Arizona—a winter and a summer season of rain. It rains on the headwaters of the streams, and freshets come down that last three or four days. With a permanent dam and a large canal the people can get the water out and irrigate the whole country during these three or four days, and then the water is gone until the next flood comes.

Senator TOWNSEND. I am very much in sympathy with giving the Indian water if it belongs to him and he is going to use it, but I still have not got it clear in my mind that this is not really a white man's proposition. In the first place, you are going to irrigate 6,000 to 8,000 acres. Now, you have not water to irrigate those, and all the Indians' lands, have you?

Mr. HAYDEN. There is ample water in time of flood in this stream to irrigate all the Indians' land that is irrigable and all the white man's land that is irrigable.

Senator TOWNSEND. When it is not in flood, do these 8,000 acres get some water?

Mr. HAYDEN. Very little, because when the river is not in flood the Indian has a prior right to the water.

Senator TOWNSEND. But he gets nothing at all if the water for those 8,000 acres is exhausted before it gets to him.

Mr. HAYDEN. In every irrigated valley in Arizona there are lands that have a prior right to waters which are located below lands that have made subsequent appropriations. The courts decree that the water shall be carried by the lands up the stream and be delivered to the lands lower down that are entitled to it. The prior appropriator has no trouble in getting his water if he has a right of way through some canal so that it is actually possible to deliver it to him.

Senator TOWNSEND. That does not occur with the Indians down there?

Mr. HAYDEN. No; because the Indian has no way of getting it. This amendment provides a physical means whereby his water will be delivered to him when it is in the river.

Senator TOWNSEND. I do not see how this gets him any water under those conditions at all. You do not provide any ditch for him. You provide a diversion dam there that for four or five days would give him some water, but practically all of the time outside of the four or five days the white man gets whatever water there is in that river for his 8,000 acres.

Mr. HAYDEN. The point is simply this, that there exists at the present time canals constructed by the white people that have heretofore diverted the water at this site—as a matter of fact there are two available canals there. I had in mind that the Secretary of the Interior would say to the white people whose lands could be irrigated from these canals, “We propose to build a dam. You own a canal. The dam, of course, will cost very much more than the construction cost of the canal, and in consideration of allowing us to acquire a right of way through these canals of yours to the Indian reservation we will allow you to obtain the flood waters from this permanent dam of ours.” It is a simple arrangement that I do not think there will be any trouble about making, because it is for the benefit of both the parties concerned. In other words, it is not required that the Government of the United States shall appropriate for the construction of a canal to the Indian reservation, because canals already exist that with slight changes and additions can be used to convey the water from this dam to the Indian lands.

Senator PAGE. But they belong to the white men.

Mr. HAYDEN. Yes; but I have no doubt that the Secretary would insist that a good title to the right of way should pass to the United States. I would if I were the Secretary. I have no doubt but that the people would be glad to transfer such title in consideration of the benefit that they would obtain from this permanent diversion dam.

Senator ROBINSON. Does your amendment contemplate that action by the Secretary, or does it leave him free to do whatever he likes to do?

Mr. HAYDEN. It leaves him free to do whatever is necessary. We do not attempt in this amendment to go into details about the matter. However, it is such a simple proposition that I think the Secretary could arrange it himself. He will not have much difficulty in dealing with the men who will be benefited by the construction of this dam.

Senator LANE. I would like to say, if you allow me right there, that usually the Indian does not benefit from the water as much as he ought to if the white man has the first opportunity to secure the water. They usually get it, and the Indian's interests are becoming merely secondary. We have that trouble in one of the reservations in Montana, and the experience has been that the interest of the Indians must be very well guarded. Here are 8,000 acres lying above the 17,000 acres, and the 8,000 acres belong to the white men. The water is going through there and what the Indian will get is problematical, and it is very hard for the department here at Washington to keep track of what is going on down there. The idea is growing all the time, and is being insisted upon, that the Indian, being useless, usually suffers, and it would look as if this proposition should be investigated. All of this is made out of reimbursable funds out

of Indian property. They ought to have water down there; these Indians need it. I heard what you said, that there was water enough for both of them, but I think the interest of the Indians ought to be carefully guarded.

Mr. HAYDEN. If the Senator will permit, I think his statement of facts is absolutely true, provided the diversion dam and the canal system are in the hands of private individuals who control the distribution of the water and let the Indian have what is left. Under such conditions the Indian is not going to do as well as though the United States Indian Service controls the site. That is what it is proposed to do in this case.

EXTRACTS FROM THE HEARINGS BEFORE THE HOUSE COMMITTEE ON INDIAN AFFAIRS ON H. R. 10385, SIXTY-FOURTH CONGRESS, FIRST SESSION.

For the construction of a dam with bridge superstructure and necessary controlling works for diverting water from the Gila River for the irrigation of Indian land and allotments on the Gila River Indian Reservation, Ariz., as recommended by the Board of Engineers of the United States Army in paragraph 217 of its report to the Secretary of War of February 14, 1914 (H. Doc. No. 791), \$200,000, to remain available until expended, reimbursable as Congress may hereafter provide.

Mr. MERITT. I offer the following justification, Mr. Chairman:

Gila River Reservation diversion dam and bridge.

Indian tribes: Maricopa, Pima.	
Number of Indians	3,800
Area of reservation, acres	361,000
Area irrigable from constructed work, acres	20,000
Area actually irrigated, acres	16,000
Area farmed by Indians, acres	16,000
Area of whole project, acres	50,000
Cost of irrigation construction	\$609,183.67
Cost of operation, maintenance, and miscellaneous	\$28,694.65
Estimated additional cost to complete project: Not completed.	
Estimated total cost of irrigation per acre (probably)	\$60
Average value of irrigated lands, per acre	\$150
Average annual precipitation, inches	9

Source of water supply: Wells and Gila River.

Market for products: Local and general (excellent).

Distance from railroad: 8 to 16 miles.

Both a bridge and some form of diversion are badly needed at this point, and by combining the two in a single structure the cost can be greatly reduced.

The weir is required to divert water for Indian lands on both sides of the river. On the north side practically \$200,000 has been expended by the Reclamation Service in the construction of canals and canal structures for the irrigation of 15,000 acres of land, but without some means of diversion this system can not be used to distribute river water, since no water can be taken into the main canal at present. This weir will divert water on the south side of the Gila River to supply eventually about 30,000 acres, of which at present about 5,000 acres are being farmed.

The usefulness of this weir is entirely independent of the San Carlos Reservoir, yet it is designed to work in conjunction with it and is a very necessary part of the San Carlos system. This weir will serve the purpose of diverting water directly from the river. This would mean that whenever there is any flow, no matter how small or how large, in the river the Indians could divert water for their crops.

At present, by the expenditure of much time and labor, the construction of a long line of brush dams after every flood in the river, they are enabled to divert some water into the old Santan Canal, which waters about 3,300 acres of land. As with all the other headings of this character in the Gila, a very small flood is sufficient to entirely destroy the dam, and by the time the Indians have rebuilt it most of the flow has gone by and sometimes but a few days' use of the dam is all the return they get for the hard labor expended in its construction.

The amount of water that could be diverted from the river during the flood periods by means of a permanent diversion would be several times greater than the amount now diverted by the temporary heading.

The effect that this increased supply of water would have on this Indian community in the way of stimulating interest in farming would be very beneficial, since the uncertain water supply that they now have tends to discourage efforts along these lines.

The bridge is very necessary for the reason that the character of the river throughout the reservation is such that a very little water renders the crossing very difficult for teams and impossible for automobiles. When the river is dry the sand is so deep that vehicles find difficulty in crossing.

At present the nearest bridge is at Florence, 23 miles above the site of the proposed bridge and weir. During the past year the river was impassable for teams for over four months and for automobiles for about nine months, and during this time all traffic between the north and south sides necessarily had to cross at Florence.

Whenever the river can not be forded that part of the reservation lying on the opposite side of the river from the agency is in effect removed 46 miles farther from the office of the superintendent, and this 46 miles is over roads that are often nearly impassable for weeks at a time. About 1,500 Indians live on the north side of the river and 2,300 on the south side.

By combining the bridge and weir the weir, together with its apron and cut-off walls, acts as the foundation for the bridge, and a large saving in the cost of construction is effected.

The CHAIRMAN. What further statement do you desire to make?

Mr. MERITT. Mr. Reed has recently visited this part of Arizona, and can give any additional information the committee may desire.

The CHAIRMAN. You may proceed, Mr. Reed.

Mr. REED. The old canal constructed by the Reclamation Service, which you mentioned this morning, has been of very little use on account of the inability to divert water into its head. This dam is designed for the purpose of diverting water into the head of that canal. On the opposite side of the river it is proposed to build another heading which would connect with the Little Gila, before mentioned, and enable a double diversion, one on each side of the river, for the use of the two systems now constructed, the one the old ancient system and the other the one constructed by the Reclamation Service. The waters now flow by there sometimes for a month without the Indians being able to derive any particular benefit from them. They get out there and struggle to make a heading, which may last not more than 24 hours, giving very little benefit. It is very discouraging, and I am surprised that the Indian has kept up as well as he has trying from year to year to get water from the river.

The other strong point is the one mentioned in the justification: The agency is cut right in two by a distance of almost 50 miles, and yet the parts are not over a thousand feet apart. They can not get across there, and the administration of that agency is quite hard under those circumstances. The Indians need the attention of an agent, and it really would save the expense of other employees to have a means of getting backward and forward across the river.

The CHAIRMAN. Is it a sandy river?

Mr. REED. Very much so. There is no foundation within reasonable reach at this point.

The CHAIRMAN. It has a sandy bottom?

Mr. REED. Yes, sir. The dam would be of what is called the floating type. It would be of concrete, but not very heavy. It would be a low diversion on broad foundations, built as many are built in India on the same kind of streams, and on the order of one built on the Colorado River above Yuma, though, of course, this would be much smaller.

Mr. CAMPBELL. What do these Indians raise?

Mr. REED. They raise wheat for their own use, and they are raising cotton. The crop which is now being most profitably produced is Egyptian cotton. Egyptian cotton seems to be almost native to that country, and it grows there perhaps better than anywhere else in the United States. The Indians seem to take very well to that kind of work.

Mr. CAMPBELL. Do they raise any stock there?

Mr. REED. Very little stock, but some. Their reservation is very small, comparatively speaking, and the grazing is not good. They have some cattle and horses for doing their work, but they are not large in that way.

The CHAIRMAN. How far above Sacaton is this dam to be?

Mr. REED. It is about a mile and a half directly. The road carries you a little more than that, but in a direct line it is not over a mile and a half.

The CHAIRMAN. Now, this dam would be a convenient place from which to take water to the old ditch that was dug several years ago by the Reclamation Service.

Mr. REED. It would head on the north side of the river at that headgate.

The CHAIRMAN. Now, by rebuilding the old ditch it would take water down past these wells, and a great deal of Indian lands would be included under that ditch, would there not?

Mr. REED. All of the Indian lands under that ditch—

The CHAIRMAN (interposing). And would not that do away with the necessity of further extending these wells, and would not the appropriation, therefore, be useless?

Mr. REED. No, sir; because the Gila River unfortunately does not run all the time. There are long periods when if you could not augment your water supply from these wells you could not make a crop. You could not raise cotton or any of the fruits. You could probably raise wheat, because wheat is planted in the fall and could be irrigated by the natural flow of the water in the river, but none of the other crops could be raised in 9 years out of 10, except by the auxiliary supply obtained from the wells.

The CHAIRMAN. If the San Carlos Dam is built with a large storage capacity, could not storage water be used to fill this dam?

Mr. REED. Then the wells would not be necessary.

The CHAIRMAN. That has been recommended by the Interior Department, and also by the engineers of the War Department, who made the investigation a few years ago. They reported in favor of the San Carlos Dam.

Mr. REED. The engineers did, provided that certain things were done, and we are trying to tie up those ends right now.

The CHAIRMAN. Another trouble has been that they have not been able to find bedrock sufficient to put the dam on.

Mr. REED. That is a part of the trouble, but there is no doubt about that question. I think bedrock is there and within reasonable limits. There are other questions that have not been definitely settled. One is the water rights, and that is under investigation. A Department of Justice man was on the ground a few days ago, and will probably file a final report within the next week or 10 days.

The CHAIRMAN. If there are any objections, they would be legal objections?

Mr. REED. There is one other engineering objection that the Army engineers think they have overcome, and that is silt.

The CHAIRMAN. That would be no greater there, or not so great as on the Rio Grande, on which we have spent several million dollars for the Elephant Butte project.

Mr. REED. Yes, sir; the silt content of the Gila is about the same as the silt content of the Rio Grande.

The CHAIRMAN. They come out of the same range of mountains.

Mr. REED. No, sir; the Rio Grande gets most of its water from Colorado and the northern part of New Mexico, while the Gila gets its waters from the extreme western part of New Mexico and the eastern part of Arizona.

Mr. NORTON. Did you draw up this proposed legislation or prepare the form of it?

Mr. REED. I did not.

Mr. MERITT. We prepared it in the Indian Bureau.

Mr. NORTON. The language is, "Available until expended, reimbursable as Congress may hereafter provide." Why do you make it reimbursable as Congress may hereafter provide?

Mr. MERITT. I see no objection to having it changed so as to make it reimbursable under such rules and regulations as the Secretary of the Interior may prescribe.

The CHAIRMAN. Is not that the usual language?

Mr. NORTON. I think that would be better language, because Congress might overlook making provision for the fund to be reimbursed.

Mr. MERITT. We will be glad to see that change made.

Mr. CAMPBELL. I do not know whether we can authorize the Secretary of the Interior to pass a law of that kind.

Mr. NORTON. I notice that the other proposals are put in that form.

Mr. CAMPBELL. But this is an entirely new reimbursable proposition. There is a general law under which these irrigation projects have been authorized and reimbursements made from the sale of lands, etc.

Mr. NORTON. These Indians have no lands to be sold, have they?

Mr. CAMPBELL. Whether this would come within that law or not I do not know.

Mr. MERITT. They have quite a large reservation, and the land is being allotted now in 10-acre tracts. There will be some surplus lands, but whether they will be sold or utilized as grazing lands for the Indians is a question to be determined later. The Pima Indians will ultimately have funds with which to reimburse Congress for any money advanced.

Mr. CAMPBELL. Is it the purpose to sell these lands or to make them pay for the irrigation of them?

Mr. MERITT. It is the purpose to require the Indians to reimburse the Government for all money advanced for irrigation purposes.

Mr. CAMPBELL. That is a general proposition, but whether that would be applied to these Indians does not appear.

Mr. MERITT. This language could very well be changed as I suggested, because that is very frequently the language of reimbursable items.

Mr. NORTON. Would you make it provide for reimbursing the United States according to such rules and regulations as the Secretary of the Interior may prescribe?

Mr. MERITT. Yes, sir.

The CHAIRMAN. Why not make it reimbursable in accordance with the act?

Mr. CAMPBELL. That might be better.

Mr. MERITT. That act applies to the placing of water on irrigable lands, and would hardly apply to this particular matter.

Mr. CAMPBELL. I doubt whether the Secretary of the Interior could make a regulation which would be equivalent to that law. I think Congress would really have to make it.

Mr. NORTON. Have these Indians any money now to their credit?

Mr. MERITT. No, sir.

The CHAIRMAN. If this large dam that the Army engineers have said was practicable is built, would not that put enough of these Indian lands under the ditch, after they have had 10 acres allotted to each one, to give them enough land to sell to raise quite a lot of money? If this large San Carlos project was carried out as indicated, would not that be the result?

Mr. MERITT. That would supply water for quite a large acreage on the Pima Reservation, but we would still need this dam, even in the event that the San Carlos Dam was constructed.

The CHAIRMAN. What I mean is this: If this San Carlos Dam is built, would they not have more land under irrigation than they would need, thus giving them surplus land to sell?

Mr. MERITT. They undoubtedly will have surplus lands on the Pima Reservation.

PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES ON H. R. 10385, SIXTY-FOURTH CONGRESS, FIRST SESSION.

The Clerk read as follows:

For commencing the construction of a dam with bridge superstructure and necessary controlling works for diverting water from the Gila River for the irrigation of Indian land and allotments on the Gila River Indian Reservation, Ariz., as recommended by the Board of Engineers of the United States Army in paragraph 217 of its report to the Secretary of War of February 14, 1914 (H. Doc. No. 79), \$75,000, to remain available until expended, reimbursable under such rules and regulations as the Secretary of the Interior may prescribe, the total cost not to exceed \$200,000.

Mr. BORLAND. Mr. Chairman, I make a point of order against that paragraph.

Mr. HAYDEN. Will the gentleman reserve his point of order?

Mr. BORLAND. I will reserve the point of order if the gentleman wants to make a speech.

Mr. HAYDEN. If the gentleman will read the hearings before the committee he will find that this appropriation is amply justified. The department asked for an appropriation of \$200,000 for this purpose, but the committee thought best to advance but \$75,000 at this time, limiting the total cost of the project to \$200,000. The United States has already constructed at great expense a canal on the north side of the Gila River which irrigates 10,000 acres of Indian land. There is a similar canal on the south side, but the Indians do not get the full benefit of these canals, although they have tried to do the best they can with brush diversion dams. This appropriation is justified by the report of a board of Army Engineers appointed by direction of the Congress to look into this matter. I would like to know on what grounds the gentleman from Missouri makes the point of order, and if he has any justification for his attitude in the matter.

Mr. BORLAND. Mr. Chairman, this work here is estimated to cost \$200,000, but so far as I know that is a very small estimate and probably an underestimate. There is no doubt, Mr. Chairman, but what it is new legislation subject to a point of order. Now, as to the justification, I might say this about it. As I understand, the Gila River carries very little water anyway, and all the irrigation that is possible is by diverting the flood water.

It is possible to occasionally divert water from the floods of the Gila River, but unless there are built storage works on the Gila River near the headwaters of the river there is no permanent source of water in the Gila River. The project has been fully considered several times by the Reclamation Commission and has been universally condemned by them as a business proposition. It is feasible from an engineering standpoint, because the Army Engineers say so; but I doubt very much whether they can limit the cost to \$200,000 or whether it would be feasible even at that. This proposition, as I understand it, contemplates only a diversion canal. That could not store any water.

Mr. HAYDEN. It does not contemplate the storage of any water.

Mr. BORLAND. And there is no water available there for constant irrigation without some storage works.

Mr. HAYDEN. The gentleman will remember that when he visited the Salt River project he saw the diversion dam at Granite Reef and that it cost very much less than the reservoir.

Mr. BORLAND. Yes.

Mr. HAYDEN. And if the farmers in the Salt River Valley to-day were compelled either to do without the Roosevelt Reservoir and maintain the Granite Reef Dam or have the reservoir and do without a permanent diversion dam, they would prefer to do without the reservoir. The people in all countries where they get water from torrential streams lose more by floods than they do by droughts. I was born under a canal system where we irrigate about 20,000 acres, and formerly we built little brush dams, just as the Pima Indians do. A flood would come along and wash the dam out, and before we could repair it the flood had passed, so that there was no water for irrigation. Now we have a permanent diversion dam, and we get the benefit of every flood that comes. That is what these Indians can

do, and it is absolutely necessary that such a permanent diversion dam be constructed in order to properly cultivate their lands on the Pima Reservation.

Mr. BORLAND. The gentleman knows as well as I do that in that country a diversion dam without storage works is practically ineffective.

Mr. HAYDEN. On the contrary, such a dam is of immense benefit.

Mr. BORLAND. The whole proposition has been on the Gila River to create storage works, and that particular storage-works proposition has been an alternative proposition with the Salt. When the Salt River was adopted it was because it was considered a better proposition than the Gila. In other words, the Gila was condemned.

Mr. HAYDEN. This appropriation is justified on its own merits, whether any storage works are ever built on the Gila River or not.

Mr. BORLAND. I want to say further to the gentleman that irrigation had not proceeded very rapidly for the white settlers; that is, the white settlers have not been able to avail themselves, even under favorable conditions, of the advantages of irrigation, but it has not proceeded rapidly at all for the Indians. In the Blackfeet Reservation they have spent nearly a million dollars of money, which is supposed to be reimbursable—though whether it will be or not I do not know—on that Two Medicine Lake diversion dam and storage works for the Blackfeet Indians. About 26,000 acres can be furnished with water. It was originally calculated at 40,000 acres. Out of those 26,000 acres last year 600 were cultivated, and this year it is said that perhaps 1,000 acres will be cultivated. In other words, it has cost the Indians, if they pay for it, \$900 an acre for storage works, and that does not take into consideration the maintenance of those works; and if you assess the maintenance of those works against the Indians, even while bringing them under cultivation, you would find that the cost was so prohibitive that the Indians would not do it.

Mr. HAYDEN. The difference between an Indian irrigation project in Montana and one in Arizona is this: When the first Spaniards came into Arizona they found the Pima Indians watering their crops. They are familiar with irrigation and know what to do with any irrigation works that may be provided for them. You take a blanket Indian, accustomed to hunting on the prairies, bring him onto a reservation, and although you may give him the benefit of the very best irrigation works, yet he does not know how to take advantage of water for irrigation. You will find that the Pimas in all their history have made beneficial use of all the water that they could get. They have been deprived of their water by appropriations farther up the stream, but they will use this diversion dam and use it well. If the gentleman will take the trouble to read the hearings, he will find that all the money heretofore spent on the Pimas for irrigation has been profitably expended.

Mr. BORLAND. Mr. Chairman, I have read the hearings, and they were very much less in their scope than the hearings we have already had on that same subject. I want to call the gentleman's attention to the hearings we have had on this very same subject when we had this proposition under consideration last year, and I want to say in this connection that the next item following is the same proposition, so that what I will read applies to both of them.

This is in relation to the San Carlos project, and I read from the hearings of last year:

Mr. BORLAND. You are also being importuned to start a project at San Carlos on the Gila?

Mr. NEWELL. That is a matter before Congress. I have been in former years enthusiastic about it, but as the years have gone by I have become less and less so. The last examination was ordered by Congress and was put into the hands of the Army engineers, rather than into our hands, it being thought possible we were not as optimistic as we might be.

Mr. STEPHENS of Texas. Is the gentleman aware of the fact that Mr. Newell has reported in favor of that?

Mr. BORLAND. He says so, and he says that further experience convinced him. He says:

The report of that board is extremely interesting. It shows that on the basis of the water supply that we are furnishing to the Salt River Valley it will cost, I think, nearly \$144 an acre. But they propose to furnish only 2-acre feet per acre at the land, while we furnish at the head of the canal 4.5 acre-feet, based on many years of experience. If they furnish as much water as we do, it will cut the project down, I think, to about 44,000 acres, barely enough for the area on the Indian reservation.

He says this will not furnish over 2 acre-feet, and that it will require $4\frac{1}{2}$ acre-feet per man:

Mr. BORLAND. So the report has been rather unfavorable to the Government carrying on the San Carlos project?

Mr. NEWELL. I would not say unfavorable; it has simply pointed out the difficulty, and that we should not go into the San Carlos project expecting to get as good a supply as we have on the Salt River project at the same price.

And further down:

Mr. MONDELL. Mr. Newell, in addition to the very considerable cost, or estimated cost, per acre of the irrigation of the lands on the Gila, I recall that former examinations there developed the fact, or was said to have developed the fact, that the Gila carries enormous quantities of silt, and that any storage reservoir built would fill up with silt in a few years. And the later examinations bore out those former statements or former expressions of opinion relative to the silting.

Mr. NEWELL. In general they have. The accumulation of silt is a most serious problem. The Board of Army Engineers in reporting upon it recommended that after a certain number of years works should be built or devices installed for getting rid of the silt—

And so forth.

Mr. BORLAND. So that you see that the cost of such a work will—

Mr. HAYDEN. The gentleman will be fair enough to the House to state that what he has read relates only to storage works?

Mr. BORLAND. Yes.

Mr. HAYDEN. What I am talking about is a diversion dam, a totally separate and distinct matter, and which stands on its own merits and has nothing to do with the San Carlos project.

Mr. BORLAND. I think the gentleman will agree with the experience of this House, that if we spend \$75,000 or \$200,000 in starting some diversion works there, the next step will be storage works, because complaint will be made, and based upon good evidence, that the particular works we have built are not available until they get some storage. When they get the storage, then they will do the same way, and say they will not be available until some method is provided for relieving the river of silt. In other words, the estimate is not anywhere near complete.

Mr. HAYDEN. I have offered this amendment in good faith, and I believe that the works can be constructed within the amount stated. The two diversion dams stand on their merits and have nothing whatever to do with the construction of a reservoir at San Carlos.

Mr. BORLAND. I insist it is hardly a beginning of what is going to be a great big project, a project of perhaps \$6,000,000.

Mr. STEPHENS of Texas. If the gentleman will permit a suggestion, the object of these diversion dams is the same as every other diversion dam at various points in the West. I have in mind the Rio Grande. It is to stop the underflow underneath the sand and silt, so that these diversion dams will hold water that will be turned loose through the ditches on the farms below, whereas if there is no diversion dam it will sink underneath the sand, and every man who lives in the West knows that underneath the quicksand of these broad rivers in the West, this one especially, you can dig down 1 or 2 feet and get plenty of water, and then if you can stop the underflow from escaping you can impound it. This is why these diversion dams are built down to hardpan, either clay or something impervious to water, so it can not seep through.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BORLAND. I make the point of order.

Mr. MONDELL. Mr. Chairman, I hope the gentleman will reserve the point of order if he intends to make it.

Mr. BORLAND. If possible, I will reserve it.

Mr. MONDELL. Mr. Chairman, I agree very largely with what the gentleman from Missouri [Mr. Borland] has said. I think, however, that what he said applies to the following item rather than to this item. I am of the opinion that it would not be wise to adopt the following item without further consideration of the matter by Congress, because the item is clearly a feature of a great project on the Gila, which would cost, as the gentleman from Missouri suggests, at least \$6,000,000. But the item now under discussion is not necessarily a part of that general project. I think there is objection to the language of the paragraph which says, "as recommended by the Board of Army Engineers." As a matter of fact, the Board of Army Engineers did not, as I recall, recommend a diversion dam at this point.

Mr. HAYDEN. If the gentleman will pardon me, in the finding of the board, page 65 of the report, to the Secretary of War—

(d) That in case the project is not undertaken until after an adjudication, a diversion dam on the reservation be constructed to improve irrigation conditions on the Pima Reservation.

In other words, whether the reservoir is constructed or not, this diversion dam ought to be built immediately.

Mr. BORLAND. Will the gentleman yield there?

Mr. MONDELL. In a moment. That particular suggestion of the Board of Engineers had escaped me. What I had in mind was that the diversion dam which was proposed by the Board of Engineers was not a diversion dam at this point, but at an entirely different point. What I started to say was this: The Board of Army Engineers did not, as a matter of fact, recommend this project at all, except under certain conditions, to wit, if on investigation it was discovered that there was a sufficient water supply available, if it was discovered that certain conditions might be met as to the acre cost.

Quite a number of "ifs" in the recommendations of the board, but none of those "ifs," so far as I know, have been met.

Mr. HAYDEN. All of those "ifs" were as to the construction of the storage reservoir; but there are no "ifs and ands" about the construction of this diversion dam, as recommended by an Army board.

Mr. MONDELL. I agree with the gentleman from Arizona, that while this is expensive work for what it would probably accomplish, it would, in the first place, give the people a good bridge at this point, and that, in my opinion, is a meritorious feature of the proposition.

Mr. HAYDEN. I will be perfectly willing to see the bridge feature stricken out rather than see the whole appropriation fail.

Mr. MONDELL. I think the gentleman ought to leave the bridge feature in it. I think it is an important one, and it does not greatly increase the cost of the structure very much. The structure would make available, more than at the present time, the waters of the Gila River for irrigation through the ditch that was made by the Reclamation Service.

Mr. BORLAND. Now, the gentleman is more familiar technically and practically with irrigation than any man in this House. As I understand from the hearings on this particular item, they now have a ditch there?

Mr. MONDELL. Yes.

Mr. BORLAND. Which is intended to divert the flood waters of the Gila, or whatever water there is in the Gila, and that ditch has not been sufficient, because there is no water in the Gila at the irrigating season of the year. Would this dam supply water for that ditch throughout the irrigating season of the year?

Mr. MONDELL. If the gentleman from Missouri had read the hearings in the matter—

Mr. BORLAND. I did read them.

Mr. MONDELL. I mean the hearings before the Committee on Indian Affairs—

Mr. BORLAND. I did so.

Mr. MONDELL. He would recall that the lock diversion dam at the intake of the ditch of the Reclamation Service—

The CHAIRMAN. The time of the gentleman from Wyoming [Mr. Mondell] has expired.

Mr. MONDELL. Mr. Chairman, I ask for five minutes more.

Mr. BORLAND. Mr. Chairman, I am withholding my point or order for that purpose.

Mr. MONDELL. As I said, he would recall the fact that the lack of a diversion dam at that point rendered the ditch that had been built for the Reclamation Service of comparatively little value. That is the situation, as I understand it.

Mr. HAYDEN. The gentleman from Wyoming states what is exactly true.

Mr. MONDELL. And this diversion dam would at least do this. That it is going to be beneficial there can be no question, because, first, it will make that ditch heretofore built by the Government available so far as there is water in the river. It will make it available much later in the season than it is now, and it will prevent the heading being constantly and annually washed out; second, it will make possible the building of a ditch on the other side, if that is advisable, for the use of water on the other side of the river, and

undoubtedly it will add very much to the value of what they already have there in the way of development. In addition to that, I am still inclined to think that the bridge feature of it is one that should not be overlooked, because there is an enormous stretch of country that would be benefited.

Mr. BORLAND. It is clear from what the gentleman says that the whole plan is problematic. Its benefit to the Indians is entirely problematic and has not been worked out by these engineers, who are specially charged with it.

Mr. MONDELL. But what I want to emphasize is this: That this work will be of a very considerable benefit. It will make useful a project we already have, and this particular work does not in any way necessarily involve entering upon the large project.

Mr. BORLAND. I think the gentleman will agree with me that we have entered hastily into these irrigation projects in the hope that they would do some good, and in many cases we have been disappointed. And this is particularly true with these Indian projects, because we always hear that the amounts spent are reimbursable from the Indians, and if they do not do any good the Indians will have to pay for them anyway. But that is not always the case. I think if we have a scientific body especially charged with that kind of work of irrigation we ought to defer to their opinion about the practicability of these works and not go into the matter simply because of the hope that they may do some good.

Mr. HAYDEN. This matter has been investigated by two different authorities: First, by a board of Army engineers, who were on the ground and spent \$25,000 in making the investigation; and, second, by the engineers of the Indian Service, who have been on the ground and have drawn plans and specifications for the dam and bridge and estimated the cost. I can not see why the gentleman continues to talk about a storage reservoir and says nothing about this diversion dam.

Mr. BORLAND. Mr. Davis says:

Yes, sir. I wish to say, though, that I do not agree with that report and never did.

Mr. BORLAND. You did not agree with that report?

Mr. A. P. DAVIS. No, sir; it was issued before I came back from Nicaragua.

Mr. BORLAND. What discrepancy did you find in that report?

Mr. A. P. DAVIS. I thought the area to be irrigated was overestimated and cost was greatly underestimated.

That is the same man who is still in charge of the Reclamation Service. Mr. Newell was the former chief, and this is the present chief.

Mr. MONDELL. Let me call my friend's attention to the fact, as the gentleman from Arizona is attempting to do, that what he is discussing is not the proposition we have now before us.

Mr. BORLAND. I think I understand he is not discussing the San Carlos Dam or the proposition at Florence, but he is discussing simply this diversion dam to divert water for the Pima Indians. That is a part of this general plan, which, in general, has been condemned. The only question is whether—and it is a very serious question—this \$200,000 dam can be built and the land can respond to its cost as a single proposition.

The CHAIRMAN. The time of the gentleman from Wyoming [Mr. Mondell] has expired. Does the gentleman from Missouri [Mr. Borland] make the point of order?

Mr. BORLAND. I make the point of order.

The CHAIRMAN. Does the gentleman from Texas [Mr. Stephens] desire to be heard on the point of order?

Mr. STEPHENS of Texas. I think the point of order is well taken.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

For beginning the construction by the Indian Service of a dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Ariz., for the irrigation of Indian lands on the Gila River Indian Reservation and private and public lands in Pinal County, Ariz., as estimated by the Board of Engineer Officers of the United States Army in paragraph 138 of its report to the Secretary of War of February 14, 1914 (H. Doc. No. 791), \$75,000, to remain available until expended, the total cost not to exceed \$175,000; *Provided*, That the water diverted from the Gila River by said dam shall be distributed by the Secretary of the Interior to the Indian lands of said reservation and to the private and public lands in said county in accordance with the respective rights and priorities of such lands to the beneficial use of said water as may be determined by a court of competent jurisdiction; *Provided further*, That the construction charge for the actual cost of said dam and other works shall be divided pro rata by the Secretary of the Interior between the Indian lands and the public and private lands in said county in accordance with the area of land entitled to water, as decreed by said court; and said charge as fixed for said Indian lands shall be reimbursable as provided in section 2 of the act of August 24, 1912 (37 Stat. L., p. 322); but the construction charge as fixed for the public and private lands in said county shall be paid by the owner or entryman in accordance with the terms of an act extending the period of payment under reclamation projects, approved August 13, 1914.

Mr. BORLAND. Mr. Chairman, I make a point of order on that.

Mr. HAYDEN. Mr. Chairman, will the gentleman withhold his point of order for a moment?

Mr. BORLAND. I will, long enough to give the gentleman a chance to make a statement about it.

Mr. HAYDEN. Mr. Chairman, this appropriation for the construction of a diversion dam on the Gila River above Florence has been approved by the Secretary of the Interior in a letter to the chairman of the Committee on Indian Affairs, which is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, January 21, 1916.

MY DEAR MR. STEPHENS: Further consideration had been given the draft of an amendment intended to be made to the Indian appropriation bill for the construction of a dam across the Gila River above Florence, Ariz., referred with your letter of December 24, 1915, requesting the views of this department thereon.

The proposed work meets the approval of this department. The provisions under which the money is to be expended relating to the control of the works, the water to be diverted thereby, and the reimbursement to the United States thereof by the owners of lands irrigable thereunder seem to provide satisfactorily for the management and financing of the project. In order that there may be no question of the supervision of the construction of this dam, it is recommended that the words "by the Indian Service" be inserted in line 1, after the word "construction."

The amount proposed to be appropriated is \$100,000, which is only part of the total cost of \$175,000. For a structure of this kind it is believed that serious risk would be run in attempting to build only part of it, owing to the danger from floods and the shifting channels of the Gila River. It is therefore recommended that the amount to be appropriated be increased to \$175,000 and that the item be amended by striking out the figures "\$175,000" and substitut-

ing therefor the words "said sum" (line 13). This change would make it necessary to strike out the word "beginning" in the first line.

The second page of the proposed amendment contains a reference to the act of August 24, 1914, as the act under which reimbursement by the Indians of their proportionate cost of the project is to be made. This is apparently a typographical error, as no doubt the act of August 24, 1912, is intended.

A similar item which was included in the bill H. R. 20150, Sixty-third Congress, second session, was the subject of my report of January 28, 1915, a copy of which is inclosed and which has been printed in the hearings before the Committee on Indian Affairs of the United States Senate, volume 1, page 498 et seq.

In addition to the information therein exhibited, the proposed work will benefit a large number of Indians on the Gila River Reservation, approximately 3,000, by providing under existing conditions for the diversion of water to irrigate an area of over 20,000 acres of fine agricultural land on the reservation. With storage provided, the area of land would be limited only by the available water supply.

Cordially, yours,

FRANKLIN K. LANE, *Secretary.*

Hon. JOHN H. STEPHENS,

Chairman Committee on Indian Affairs, House of Representatives.

A similar item was included in the Indian appropriation bill in the Senate last year. That bill failed to become a law owing to the filibuster at the close of the session. In his report made at that time the Secretary of the Interior said:

JANUARY 28, 1915.

MY DEAR SENATOR ASHBURST: I have received your communication of January 19, 1915, requesting report upon a proposed amendment to the Indian bill making an appropriation of \$75,000 for beginning the construction of a dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Ariz., for the irrigation of Indian land and allotments on the Gila River Indian Reservation and private lands in Pinal County, as estimated by the Board of Engineer Officers of the United States Army in its report to the Secretary of War, page 46, paragraphs 136-138 (H. Doc. 791, 63d Cong., 2d sess.).

This report describes the situation with regard to the diversion dam which it will be necessary to construct in order to utilize the waters of the Gila River when the San Carlos Dam is built. However, the usefulness of this diversion dam does not depend entirely upon the construction of the San Carlos Reservoir, because for many years past considerable areas of land have been irrigated by diversion through various headings of the flood flow of the Gila River above Florence. To irrigate the lands of the Pima Indian Reservation upon the south side of the Gila River at the upper or eastern end of the end of the reservation will require the construction of such a dam in order to conserve the flow of the river to as great an extent as possible. The proposed site, about 12 miles above Florence, is at the mouth of a series of canyons through which the river flows uninterruptedly from San Carlos, but from this point on the river course is through a broad flat valley, with an immense river bed, consisting of broad deep deposits of silt and gravel. When the flow of the river is low, and when, of course, water is most valuable, the stream disappears entirely soon after emerging from the mountains above Florence.

Aside from the use which the Indian reservation may eventually make of this diversion dam, practically all of the landowners off the reservation who have been irrigating in this vicinity may receive their supply of flood water from this point of diversion.

The Gila River has just experienced one of the most disastrous floods in its history, and all the headings of the various canals above Florence have been washed away, and the earth covering through which these canals ran has been entirely removed, so that these channels can not be again constructed. The superintendent of the reservation reports also that at least one canal heading for the Indian reservation, on the south side of the river, is washed out, and the large canal, known as the Little Gila, has been very badly damaged. The land which this canal supplies with water could be reached from channels heading at the diversion dam which it is proposed to build, and when so supplied would be past all danger of future damage or destruction.

The white owners who have suffered by the recent floods might possibly secure means of constructing a dam at the point mentioned, thus insuring to themselves immunity from a recurring flood, but it might be necessary for the Government to oppose such a step in order to protect the water right now claimed for the Indians.

While there is no doubt but that, as a matter of law, the Pima Indians have a prior right to the waters of the Gila River as against all other appropriators on that stream, yet they have not been receiving a sufficient quantity of water to irrigate their lands for lack of the physical means of obtaining the same. The construction of a diversion dam at this point will give the Indians an advantage of location that they have not heretofore enjoyed, because the Government of the United States will thus actually control the only feasible point where the waters of the Gila may be diverted. The Indians are entitled to control this strategic position in order to adequately preserve and perpetuate the Government's claim to water in their behalf, and for this reason alone, whether the San Carlos Reservoir is ever constructed or not, this appropriation is amply justified.

The cost of the diversion dam itself is estimated by the Board of Army Engineers as \$150,000, and an additional item of \$25,000 should be included in order to make the necessary excavation through the rock heading, so that connection may be made with the present canal systems of the Florence district. The site of the proposed diversion is an ideal one compared with others along the Gila River, as on both sides of the river are massive outcroppings of rock. The river bed is comparatively narrow and confined between hills to this one channel, and a railroad upon which to bring in supplies and materials parallels the river at this point, so that the cost would be the minimum for such work. The railroad track is high enough above the river so that no interference with its operation will result even after the dam is built. The dam will not be high enough for storage purposes, but simply a low weir a few feet above the normal surface of the river, so that water may be properly diverted into the canal, and that all of the flow at the low stages, when the water is most valuable, and which occur for long periods, may be available.

It is recommended that the proposed amendment receive favorable consideration by Congress.

Cordially, yours,

FRANKLIN K. LANE.

Hon. H. F. ASHURST,

Chairman Committee on Indian Affairs, United States Senate.

That a diversion dam can be constructed for the amount named in this bill is shown by the report of the Board of Engineer officers of the Army, three paragraphs of which discuss this subject:

136. At the several sites for a diversion dam ledge rock is found at one or both abutments, but investigation has shown that toward the center of the river rock is not within practicable reach. However, for the lift desired, not to exceed 10 feet, a dam of the Indian type will answer.

137. Through the courtesy of Mr. G. S. Binckley, member of the American Society of Civil Engineers, the board has been able to consult the design for a diversion dam for this place prepared by the late Mr. J. D. Schnyler in 1911 and a later design prepared by Messrs. Schnyler and Binckley.

138. From a consideration of these designs and the quantities of materials required for a dam following the second design the board is able to state that the cost of the diversion dam, including head gate and silt sluice, need not exceed \$150,000.

Worse floods than the high water in the Gila mentioned in the original report of the Secretary of the Interior have recently occurred, as is shown by this telegram which I have received from Mr. F. H. Thackery, the superintendent at Sacaton:

SACATON, VIA CASA GRANDE, ARIZ., February 3, 1916.

Hon. CARL HAYDEN,

House of Representatives, Washington, D. C.:

Recent flood damage to Indian lands and canals is more than \$100,000 on Pima Reservation. Immediate relief urgent.

THACKERY, Superintendent.

I have also received three other telegrams, which will give the House an idea of the necessity for this appropriation:

FLORENCE, ARIZ., February 3, 1916.

HON. HENRY F. ASHURST,
Washington:

Recent flood of Gila River damaged various canals and heads and other properties of white settlers to amount of \$40,000. Have conferred with Thackery, superintendent Pima Indian Reservation, and he estimates their damage sustained by same flood at not less than \$100,000.

E. W. COKEE.

CASA GRANDE, ARIZ., February 2, 1916.

HON. HENRY F. ASHURST,
Washington, D. C.:

Conditions here serious. Demand prompt attention to avoid great suffering. Canals badly broken. Head gates and dams all washed out. Much other damage done by recent floods. Three thousand Indians and large number of white settlers dependent on waters of Gila River to mature crops. Unless something is done immediately will be left in destitute circumstances. Appropriation should be made and work started on diversion dam above Florence at once. Such dam would solve problem and be salvation of country.

J. F. BROWN.

CASA GRANDE, ARIZ., February 2, 1916.

HON. CARL HAYDEN,
House of Representatives, Washington, D. C.:

Chamber of commerce of Casa Grande, Ariz., urges passage of your amendment in Indian appropriation bill for diversion dam on Gila River above Florence. Absolutely necessary to enable Indians, settlers, and farmers to save crops. Situation most critical. Temporary dams out by recent floods. Much suffering unless Congress gives relief. Wire result.

CHAMBER OF COMMERCE,
A. A. JAYNE, President.

This calamity which has fallen on the white settlers and Indians alike has forced everybody to recognize that they have a community of interest in the waters of the Gila, and that the only way that these flood water can be put to a beneficial use is by the construction of a reinforced-concrete diversion dam by the Government. These same waters that now spread destruction along the valley of the Gila can thus be controlled and made to serve the irrigators, both red and white, who are most anxious for this relief. The Indians and the white men must live together in this valley for all time to come. They have suffered alike from floods and from drought, and I want to see them prosper together in equal measure, as I know they will if Congress appropriates the money for this diversion dam above Florence.

Mr. BORLAND. Mr. Chairman, this is the larger project that the gentleman was speaking about. When the reclamation law was first passed, one of the projects that was then being considered by the Geological Survey which had a good deal of influence on passing the bill was the storage works on the Gila River, but after the law was passed, private interests in the Salt River Valley were so much more influential and powerful that they succeeded in killing the Gila River project and in substituting for it the Roosevelt Dam on the Salt River, on which we have expended \$11,000,000. It was thought by some Members at that time that we were making a mistake with

respect to the relative advantages of the two projects; that we ought to have gone on with the Gila River project and not undertaken the Salt River project. But in their anxiety to kill the Gila River project the Salt River interest did it effectually, and they secured various engineer's reports showing that the Gila project was impracticable. The great objection was that a dam on the Gila would fill up with silt in a short time. We asked them during the hearings, "If a dam silts up, what will you do?" and they answered that in India, where such projects were carried on, when a dam silts up they let it go and proceed to build another dam. You will find that given in the testimony.

I am talking about the general project, and I admit that, as a pure business proposition in all these southwestern streams, like the Gila River and the Salt River, storage works are the essential features. I do not think it would be two sessions of Congress, or maybe one, after action was had here before local interests would be here again asking for storage works. The Government might invest \$400,000 in these two projects, and then it would be argued that it would be a moral crime not to give the people water, and the only way to do that would be to put in storage works.

The local interests secured the Salt River project, and now, on the Indian bill, they are trying to put in the Gila project also, before a dollar has been returned to the Reclamation Service for the construction charges on the other project, although the Salt River Valley is eminently prosperous, as I think the gentleman will admit, and is one of the most beautiful valleys in the world and full of active and energetic and prosperous people.

Mr. HAYDEN. I am coming here asking this Congress for an appropriation for this project on its own merits, it having nothing to do with the construction of the San Carlos Reservoir. Regardless of whether the San Carlos Reservoir is ever constructed or not, this appropriation is amply justified.

**EXCERPTS FROM HOUSE DOCUMENT 791 (63D CONG., 2D SESS.),
BEING A REPORT TO THE SECRETARY OF WAR OF A BOARD OF
ENGINEER OFFICERS OF THE UNITED STATES ARMY UNDER
THE INDIAN APPROPRIATION ACT OF AUGUST 24, 1912, ON THE
SAN CARLOS IRRIGATION PROJECT, ARIZONA.**

23. The investigation of the question of water storage in the Gila watershed grew out of the fact that by 1896 the diversion of water from the Gila by white settlers above the Gila Indian Reservation had deprived the Pimas of much of their customary supply of water and reduced this nation, till then self-supporting, to dependence upon national charity.

The occasion of this investigation (that of 1896) lies in the necessity of promptly providing water for use in agriculture on this (the Gila Indian) reservation. The Indians here located have from time immemorial been self-supporting. They have carried on irrigation for centuries by means of water taken from the Gila River. * * * For a number of years the United States has been, and still is, rapidly disposing of the land along the river, it being well known that these lands have no value unless water is taken from the stream, and it has been equally apparent that by this action the Indians would be pauperized by being deprived of their only means of support. Public attention has

been called to this matter from time to time. * * * Meanwhile it is asserted that the Indians, learning to depend upon the Government for food and clothing, have been rapidly losing their capabilities for self-support and are becoming a permanent charge and source of annual expense. If they are to be kept from further degradation, it is necessary that prompt action be taken toward enabling them to practice some means of self-support. This is possible only by securing to them the means of obtaining an ample supply of water.

136. At the several sites for a diversion dam ledge rock is found at one or both abutments, but investigation has shown that toward the center of the river rock is not within practicable reach. However, for the lift desired, not to exceed 10 feet, a dam of the Indian type will answer.

137. Through the courtesy of Mr. G. S. Binckley, member of the American Society of Civil Engineers, the board has been able to consult the design for a diversion dam for this place prepared by the late Mr. J. D. Schuyler in 1911, and a later design prepared by Messrs. Schuyler and Binckley.

138. From a consideration of these designs and the quantities of materials required for a dam following the second design, the board is able to state that the cost of the diversion dam, including head gate and silt sluice, need not exceed \$150,000.

143. *Public lands.*—As above stated (par. 24), there is almost no public land left within the limits of that area to which water can readily be distributed under the San Carlos project.

144. *Indian lands.*—It is a matter of undisputed history that from a time prior to the coming of the white man the Indians have appropriated water continuously from the Gila River for the irrigation of lands in what is now the Gila River Indian Reservation. The Little Gila, which branches from the main river near the eastern end of the reservation, is generally believed to be an ancient irrigation canal, enlarged by floods. It still serves as a main canal for lands on the south side of the river. Head gates have recently been placed at its source, and 30,000 acres of land irrigable under it are being allotted in 10-acre tracts to individual Indians. On the north side of the river 10,000 acres more are similarly being allotted under the New Santan ditch, which leaves the river about 11 miles below the head of the Little Gila. Water pumped from wells is also furnished to this land.

145. It appears above (par. 21) that the total area of the reservation is approximately 360,000 acres, of which, according to Mr. Olberg, over 100,000 acres are susceptible of irrigation. The total area cultivated by the Pimas, some at one time and some at another, is variously estimated at from 30,000 to 52,000 acres. Mr. Thackery, superintendent of the Sacaton School, states that the area under cultivation in October, 1913, was about 14,795 acres, but that, due especially to the putting in of the Little Gila head gates, preparations are being made to cultivate a larger area next year.

146. Messrs. Thackery and Olberg express the opinion that water from the San Carlos project should be furnished for 50,000 acres of land on the Indian reservation, being 10 acres per capita on the basis of a prospective population of 5,000, the population in 1912 being 3,996.

153. A portion of the land in any irrigation district is pasture, fallow lands, corrals, etc., unirrigated; this portion being estimated

by some engineers at as much as 25 per cent. The board believes that in this case it would be proper to increase by $12\frac{1}{2}$ per cent the area to which the assumed minimum annual water supply would furnish 2 acre-feet per acre. It is explained below that, assuming the canal and main laterals to be lined, the loss of water between the diversion dam and the land, Indian and private, ought not to exceed 20 per cent, allowing, therefore, a loss of 20 per cent between the diversion dam and the land, the assumed annual supply of 200,000 acre-feet would provide 160,000 acre-feet at the land, which at 2 acre-feet per acre would irrigate 80,000 acres. Increasing this 80,000 acres by $12\frac{1}{2}$ per cent, as explained above, gives a gross area of 90,000 acres. Of these 90,000 acres, 35,000 acres (the equivalent of 35,000 acres) would be Indian lands (par. 147), and 55,000 acres would constitute the private-land district. In the above, the 200,000 acre-feet at the heading is divided between Indian and private lands in the proportion of 77,778 and 122,222 acre-feet, respectively, which is the same as that existing between the gross acreage in the two cases; or as 35/90 to 55/90. The cost of those items of the project which are common to Indian and private lands (par. 168), should be divided in this proportion (par. 169); which, being based upon relative amounts of water furnished, would be unaffected by the number of acres of land, Indian or private, to which the allotted shares of water might be at any time applied (pars. 213, 214). The irrigation of the private lands will result in a certain quantity of water becoming available either at the surface or in wells on the reservation. It is impracticable to estimate the amount of this return flow, though on account of the high duty of water assumed for this project, its percentage will be less than is usually counted on. Nor can it be known in advance whether this water will be of as good quality as the water originally applied. On account of these uncertainties the board does not include any return water in the supply to be furnished by the project to the Indian lands.

* * * * *

171. Stored water might be gotten to the new Santan ditch by building a canal about 31 miles long on the north side of the river from the diversion dam; by building a diversion dam at the reservation, either at the Santan ditch or at the Little Gila heading, with a canal in the latter case, about 11 miles long on the north side, or by an aqueduct or siphon at the reservation. A diversion dam on the reservation would also intercept a portion of the return flow from the private-land district (par. 153). Again, there will be at times water running over the diversion dam above Florence, and finally, a lower diversion dam would be available for the diversion of water to the Indian lands on either side of the river, in case of a breach in the main canal or in the Pima branch. An aqueduct might be considered in case it were in contemplation to construct a permanent bridge across the river near Sacaton. A means of getting stored water to the north side will not become a necessity until the storage dam has been constructed and water begins to be impounded. The estimated cost of any satisfactory means of accomplishing the purpose under discussion will be taken as the same as the estimated cost of the upper diversion dam, viz, \$150,000.

216. The irrigation facilities provided under this project will excel any ever before enjoyed by the Indians, and to that extent the project might seem a gratuity to the Indians. But in dealing with this question it is not more important to right the wrong of the past than to provide for the future advancement of this tribe. There is no other way to effect a satisfactory and permanent solution of the long-standing Pima question.

RECOMMENDATIONS.

217. The board recommends—

(a) That the San Carlos irrigation project, as described in this report, be adopted and carried out by the United States, provided it shall appear, either as the result of an adjudication or of competent legal opinion, as Congress may elect, that the legally available water supply is sufficiently close to that assumed in this report to make the cost of the project not more than \$75 per acre.

(b) That suit for an adjudication of water rights along the Gila River be immediately brought in the United States district court (the United States being a party to the suit) and that every other step be taken which will hasten an early adjudication.

(c) That such executive and legal steps be taken as may be necessary to prevent the vesting of any water rights in addition to those, if any, now existing.

(d) That in case the project is not undertaken until after an adjudication, a diversion dam on the reservation (par. 171) be constructed to improve irrigation conditions on the Pima Reservation.

W. C. LANGFITT,
Colonel, Corps of Engineers,
United States Army, Senior Member.

C. H. MCKINSTRY,
Lieutenant Colonel, Corps of Engineers,
United States Army, Member and Executive Officer.

H. BURGESS,
Major, Corps of Engineers,
United States Army, Member.

EXTRACTS FROM PRESENT LAW.

[PUBLIC—No. 80—64TH CONGRESS.]

[H. R. 10385.]

An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seventeen.

Approved, May 18, 1916.

* * * * *

For beginning the construction by the Indian Service, of a dam with a bridge superstructure and the necessary controlling works

for diverting water from the Gila River for the irrigation of Indian land and Indian allotments on the Gila River Indian Reservation, Arizona, as recommended by the Board of Engineers of the United States Army in paragraph two hundred and seventeen of its report to the Secretary of War of February fourteenth, nineteen hundred and fourteen (House Document numbered seven hundred and ninety-one), \$75,000, to be immediately available and to remain available until expended, reimbursable as provided in section two of the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page five hundred and twenty-two), the total cost not to exceed \$200,000.

* * * * *

For beginning the construction by the Indian Service of a diversion dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Arizona, as estimated by the Board of Engineer Officers of the United States Army in paragraph one hundred and thirty-eight of its report to the Secretary of War of February fourteenth, nineteen hundred and fourteen (House Document Numbered Seven hundred and ninety-one), \$75,000, to remain available until expended, the total cost not to exceed \$175,000: *Provided*, That said dam shall be constructed as a part of a project for the irrigation from the natural flow of the Gila River of Indian lands on the Gila River Indian Reservation and private and public lands in Pinal County, Arizona: *And provided further*, That the water diverted from the Gila River by said diversion dam shall be distributed by the Secretary of the Interior to the Indian lands of said reservation and to the private and public lands in said county in accordance with the respective rights and priorities of such lands to the beneficial use of said water as may be determined by agreement of the owners thereof with the Secretary of the Interior or by a court of competent jurisdiction: *And provided further*, That the construction charge for the actual cost of said diversion dam and other works and rights shall be divided equitably by the Secretary of the Interior between the Indian lands and the private and public lands in said county; and said cost as fixed for said Indian lands shall be reimbursable as provided in section two of the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page five hundred and twenty-two); but the construction charge as fixed for the private and public lands in said county shall be paid by the owner or entryman in accordance with the terms of an Act extending the period of payment under reclamation projects, approved August thirteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and eighty-six): *And provided further*, That said project shall only be undertaken if the Secretary of the Interior shall be able to make or provide for what he shall deem to be satisfactory adjustments of the rights to the water to be diverted by said diversion dam or carried in canals, and satisfactory arrangements for the inclusion of lands within said project and the purchase of property rights which he shall deem necessary to be acquired, and shall determine and declare said project to be feasible.

EXCERPTS FROM HEARINGS BEFORE A SUBCOMMITTEE OF THE
COMMITTEE ON INDIAN AFFAIRS, HOUSE OF REPRESENTA-
TIVES, SIXTY-FOURTH CONGRESS, SECOND SESSION, H. R. 18453.

(Pages of Hearings 122 et seq.)

The CHAIRMAN. The next item is:

For completing the construction by the Indian Service of a dam with a bridge superstructure and the necessary controlling works for diverting water from the Gila River for the irrigation of Indian land and Indian allotments on the Gila River Indian Reservation, Ariz., as recommended by the Board of Engineers of the United States Army in paragraph 217 of its report to the Secretary of War of February 14, 1914 (H. Doc. No. 791), \$125,000, to be immediately available and to remain available until expended, reimbursable as provided in section 2 of the act of August 24, 1912 (37 Stat., p. 522), the total cost not to exceed \$200,000.

Mr. MERITT. We offer for the record the following justification:

Diversion Dam, Gila River Reservation, Ariz. (reimbursable).

Fiscal year ending June 30, 1917, amount appropriated..... \$75,000
No appropriation for 1916.

STATISTICS FOR WHOLE GILA RIVER RESERVATION.

Indian tribes, Maricopa, Pima.
Number of Indians, 3,800.
Area of reservation, 361,000 acres.
Area irrigable from constructed works, 20,000 acres.
Area actually irrigated, 18,000 acres.
Area farmed by Indians, 18,000 acres.
Area of whole project, 50,000 acres.
Cost of work already authorized, \$75,000.
Cost of completed dam and bridge, \$200,000.
Estimated additional cost to complete project, _____.
Estimated total cost of irrigation, probably \$60 per acre.
Average value of irrigated lands, \$150 per acre.
Average annual precipitation, 9 inches.
Source of water supply, wells and Gila River.
Market for products, local and general (excellent).
Distance from railroad, 8 to 16 miles.
Gila River Reservation, Sacaton Bridge and Dam, \$125,000.

This is the balance needed to complete the work which was authorized in the Indian act for 1917.

Both a bridge and some form of diversion are badly needed at this point, and by combining the two in a single structure the cost may be greatly reduced.

The weir is required to divert water for Indian lands on both sides of the river. On the north side a large sum has been expended by the Reclamation Service in the conservation eventually of 10,000 acres of land, but without some means of diversion this system can not be used to distribute river water, since no water can be taken into the main canal at present. This dam will divert water on the south side of the Gila River to supply eventually about 30,000 acres, of which at present about 8,000 acres are being farmed.

The usefulness of this weir is entirely independent of the proposed San Carlos Reservoir, yet it is designed so that it would be useful if the reservoir were built. The weir will serve the purpose of diverting water directly from the river. This means that whenever there is any flow, no matter how small or how large, in the river the Indians could divert water for their crops.

At present, by the expenditure of much time and labor in the construction of a long line of brush dams after every flood in the river, they are enabled to divert some water into the old Santan Canal, which waters about 3,300 acres of land. As with all the other headings of this character in the Gila, a very small flood is sufficient to entirely destroy the dam, and by the time the Indians have rebuilt it most of the flow has gone by and sometimes but a few days' use of the dam is all the return they get for the hard labor expended in its construction.

The amount of water that could be diverted from the river during the flood periods, by means of a permanent diversion, would be several times greater than the amount now diverted by the temporary heading.

The effect that this increased supply of water would have on this Indian community in the way of stimulating interest in farming would be very beneficial, since the uncertain water supply that they now have tends to discourage efforts along these lines.

The bridge is very necessary for the reason that the character of the river throughout the reservation is such that a very little water renders the crossing very difficult for teams and impossible for automobiles. When the river is dry the sand is so deep that vehicles find difficulty in crossing.

At present the nearest bridge is at Florence, 23 miles above the site of the proposed bridge and weir. During the past year the river was impassable for teams for over four months, and for automobiles for about nine months, and during this time all traffic between the north and south sides necessarily had to cross at Florence.

Whenever the river can not be forded, that part of the reservation lying on the opposite side of the river from the agency is in effect removed 46 miles farther from the office of the superintendent, and this 46 miles is over roads that are often nearly impassable for weeks at a time. About 1,500 Indians live on the north side of the river and 2,300 on the south side.

By combining the bridge and weir, the weir together with its apron and cut-off walls acts as the foundation for the bridge, and a large saving in the cost of construction is effected.

The CHAIRMAN. What is the necessity of that? I see you have stricken out the word "beginning" and inserted the word "completing."

Mr. MERITT. For the reason that when we began that item was carried in the Indian appropriation act of the current year, and this amount we are requesting will enable us to complete the project.

The CHAIRMAN. Why is it necessary to increase the amount from \$75,000 to \$125,000?

Mr. MERITT. It was understood last year that we would ask a sufficient amount this year to complete the project. We are simply starting on the project now, and we will not begin very much construction work on that project—

The CHAIRMAN (interposing). When was that project passed upon—agreed upon?

Mr. MERITT. It was agreed upon by the Indian committees of the House and Senate, and allowed by Congress at the last session.

The CHAIRMAN. It is a going project?

Mr. MERITT. It is being carried on now, and the work has been started. This project is desirable, indeed. The site for this construction, this bridge and dam, is just above the Sacaton agency. The river, as you recall, is very wide, and the Gila River is very irregular and an uncertain proposition, and it is difficult to keep it within its banks. By the way, the site for this bridge is immediately below the headgate of the ditch that you referred to a few minutes ago, Mr. Chairman, and if we get this bridge and dam we will be able to bring water to the mouth of that headgate and irrigate quite a large acreage of Indian land. I was at this site in the spring and saw the conditions there myself.

The CHAIRMAN. The next is stricken out. It is law, I guess. The next is:

For additional installments of the charges for providing water rights for 6,310 acres of Salt River Indian allotments provided in the act of May 18, 1916, and for the extension of canals and laterals and for the construction of other necessary irrigation facilities to supply the said lands with water, \$20,000.

That is new. What is the necessity for that?

Mr. MERITT. You notice the language stricken out refers to the same matter.

The CHAIRMAN. It simply rewrites the language stricken out.

Mr. MERITT. I offer for the record the following justification for this item:

Water rights, Salt River Indian allottees, Arizona.

Fiscal year ending June 30, 1917: Amount appropriated..... \$20,000
Fiscal year ended June 30, 1916: No appropriation for 1916.

SALT RIVER RESERVATION.

Indian tribes, Maricopa and Pima.
Number of Indians, 972.
Area of reservation, acres, 46,720.
Area irrigable from constructed works, acres, 6,507.
Area farmed by Indians, acres, 6,507.
Area of whole project, acres, 12,000.
Cost of irrigation construction, \$1,544.41.
Cost of irrigation operation, maintenance, and miscellaneous, \$4,897.98.
Estimated additional cost to complete, \$300,000.
Estimated total cost of irrigation per acre, \$65.
Average value of irrigated land per acre, \$150.
Average annual precipitation, inches, 12.
Source of water supply, Roosevelt Reservoir.
Market for produce, local and general (excellent).
Distance from railroad, 15 miles.

This item is for the second payment upon the building charges and for maintenance of the irrigation system covering the land for which authority was granted in the Indian appropriation act for 1917 to secure water from the Salt River reclamation project. It may also be necessary to construct and repair some of the smaller laterals which lead to the farm units of only 10 acres, these being smaller divisions than are constructed and maintained by the Reclamation Service under the rules and laws pertaining to the general construction of the Salt River project. The Indians of this reservation have made excellent use of all opportunities which have been afforded them to carry on agriculture.

This is simply for the purpose of carrying out legislation already authorized.

The CHAIRMAN. It simply carries out the same appropriation, but in different language?

Mr. MERITT. Yes, sir.

Mr. CAMPBELL. What did you do with the money appropriated last year?

Mr. MERITT. We paid that as an installment on the water rights that we bought for these Indians, and this is another installment.

The CHAIRMAN. The next item is as follows:

For completing the construction by the Indian Service of a diversion dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Ariz., as estimated by the board of engineer officers of the United States Army in paragraph 138 of its report to the Secretary of War of February 14, 1914 (H. Doc. No. 791), \$100,000, to remain available until expended, the total cost not to exceed \$175,000; and for beginning the construction of the necessary canals and structures to carry the natural flow of the Gila River to the Indian lands of the Gila River Indian Reservation and to public and private lands in Pinal County, as provided in the act of May 18, 1916, \$125,000, to remain available until expended; in all, \$225,000: *Provided*, That the water diverted from the Gila River by said diversion dam and canals shall be distributed by the Secretary of the Interior to the Indian lands of

said reservation and to the private and public lands in said county in accordance with the respective rights and priorities of such lands to the beneficial use of said water as may be determined by agreement of the owners thereof with the Secretary of the Interior or by a court of competent jurisdiction: *Provided further*, That the construction charge for the actual cost of said diversion dam and other works and rights shall be divided equitably by the Secretary of the Interior between the Indian lands and the private and public lands in said county; and said cost as fixed for said Indian lands shall be reimbursable as provided in section 2 of the act of August 24, 1912 (37 Stat., p. 522); but the construction charge as fixed for the private and public lands in said county shall be paid by the owner or entryman in accordance with the terms of an act extending the period of payment under reclamation projects, approved August 13, 1914 (38 Stat., p. 686): *And provided further*, That said project shall only be undertaken if the Secretary of the Interior shall be able to make or provide for what he shall deem to be satisfactory adjustments of the rights to the water to be diverted by said diversion dam or carried in canals and satisfactory arrangements for the inclusion of lands within said project and the purchase of property rights which he shall deem necessary to be acquired and shall determine and declare said project to be feasible.

Mr. MERITT. I offer for the record the following justification for that item:

Diversion dam, Gila River, above Florence, Ariz. (reimbursable).

Fiscal year ending June 30, 1917: Amount appropriated.	875,000
Fiscal year ended June 30, 1916: No appropriation for 1916.	
Florence Dam	225,000

This appropriation is for the completion of the dam authorized in the Indian act for 1917, which is located about 12 miles above the town of Florence, Ariz., on the Gila River. In addition it is proposed to begin the construction of a main canal, by which the water from this diversion dam may be carried to the lands to be benefited thereby. The crude and unsubstantial devices which the Indians on the Gila River Reservation and the white people in this vicinity have hitherto used are entirely inadequate for obtaining a reliable and continuous supply of water even when there is a flow in the river. The floods of the last few years have so widened and altered the channels of the Gila River that it has been impossible in some instances to again divert water in the canals formerly used, so that without the system which has been authorized greater difficulty than ever will be experienced in farming the land, which yields most bountiful crops when provided with water.

The Pima Indian lands to which water will be taken are about 18 miles below the site of the dam and the main body of white lands to which water will be brought lie from 8 to 22 miles. It will thus be seen that the canal construction is absolutely necessary to make the water of any use to the Indians, and as the whole project is to be reimbursed to the Government and as probably more than 30,000 acres are at present being farmed by both Indians and whites with great expense and loss each year on account of the inability to secure water when needed, the urgency of providing funds here requested is apparent.

With the use of the dam already authorized and the canals for which funds are now being requested not only may the lands already farmed be irrigated more cheaply and satisfactorily, but a much larger area may be supplied with water. Many Indians upon the Pima Reservation can not now be given irrigable allotments because of the difficulty of watering any more land. This proposed dam and canal will supply not only these Indian lands, but also such additional lands belonging to white owners for which water is found to be available.

Mr. MERITT. This is another project authorized in the last Indian appropriation act, and we propose, if we can get the appropriation we are requesting, to complete that project. It is for the purpose of building a dam on the Gila River above Florence, about 12 miles above Florence. It is a diversion dam for the purpose of irrigating the lands of the Pima Indians and also for the purpose of irrigating lands of the white people, but they will be required to pay their

pro rata share. We are now in the process of settling that on an amicable basis and getting water for the benefit of those Indians. I was at the site of that dam this spring, and it is one of the best dam sites on that reservation.

Mr. CARTER. I notice here you say the total cost will not exceed \$175,000, and now you ask for an appropriation of \$125,000 in addition to the \$175,000, which makes it \$300,000.

The CHAIRMAN. I think the diversion dam was what they meant by that.

Mr. MERITT. The diversion dam will not cost to exceed \$175,000, and we propose now to begin the construction of the necessary canals and structures to carry the natural flow of the Gila River to the Indian lands. After we get the dam constructed it will be necessary to build the laterals to carry water to the Indian land.

Mr. CARTER. What will be necessary after that is done? I saw that last year, and I supposed that \$175,000—

Mr. MERITT (interposing). That will complete the appropriation, when we get the laterals constructed. Of course, the dam alone would not be sufficient. It is necessary to have the laterals to carry the water to the Indian lands, and that is explained fully in the justification submitted.

Mr. CAMPBELL. That was not in connection with this, however.

Mr. CARTER. Was that known last year?

Mr. MERITT. Yes, sir; it was fully known, and it was contemplated at that time as soon as the dam was completed that we would necessarily have to build the laterals.

Mr. CAMPBELL. There was no estimate made of it. It was stated positively, I remember, that \$175,000 was all that would be necessary to complete that enterprise.

Mr. CARTER. We had quite a lot of discussion about that.

Mr. CAMPBELL. It was hung up in conference for several days.

Mr. MERITT. We meant by that it would be all that would be necessary to complete the dam.

Mr. CAMPBELL. The project was, the way I understood it.

The CHAIRMAN. In line 13 you say "and for beginning of necessary construction." It seems that those canals to carry water onto the lands had never been provided for.

Mr. CARTER. How much will you want for the completion of those canals?

Mr. MERITT. I could not answer that now. I can give an estimate of the total amount of the cost of construction of the laterals and furnish that for the record.

(This information is as follows:)

The work to be done on this project consists of the joint work at the Florence Dam, headworks, sluices, and wasteways at the headworks, and a canal with its turnouts, gates, checks, drops, bridges, culverts, etc., in which all parties interested will contribute to the cost.

This work is estimated to cost \$800,000, requiring \$430,000 in addition to the \$175,000 estimated for the dam. In addition to the joint work there will be needed for the Indian lands a main canal, estimated to cost \$165,000, and distribution system under the Florence Dam, estimated to cost \$50,000. There will also be needed a distribution system for the Indian lands under the Sacaton Dam, estimated to cost \$326,000, and owing to the widening of the river and the increased cost of labor and material, \$50,000 additional to the amount heretofore appropriated for the Sacaton bridge and dam will be necessary.

The total amount required for the completion of the project, according to present estimates, is therefore \$1,190,000. Of this \$605,000 will be for both Indian and other lands and \$585,000 will be for the use of the Indians. A large part of the work to be done for the purely Indian part of the project would be necessary in any event.

The CHAIRMAN. I see on the first line of the next page you say, "Provided, That the water diverted from the Gila River by said diversion dam and canals." Is it necessary to put in the word "canals" there?

Mr. MERITT. That is necessary because we propose to construct the canals or laterals to take care of the water from the dam.

The CHAIRMAN. You have no canals for them adequate for carrying off the water that you propose to use on the land below?

Mr. MERITT. No, sir. There is one canal there that was formerly used by the white owners of land that they make use of in connection with a distribution system, but it will be necessary to construct a number of canals.

The CHAIRMAN. But how many acres of land will be accommodated with water by this construction?

Mr. MERITT. It is my understanding there will be probably 20,000 acres of land.

The CHAIRMAN. Twenty thousand acres?

Mr. MERITT. Yes, sir.

The CHAIRMAN. Will that greatly increase the value of the land from what it is now worth?

Mr. MERITT. Oh, yes; the land is practically desert now.

The CHAIRMAN. When the dam is completed as proposed in this Army officer's report and they are able to get water on the land it will be worth something like \$100 an acre, would it not?

Mr. MERITT. Yes, sir.

The CHAIRMAN. Whereas now it is practically valueless.

Mr. CAMPBELL. Now, about this 30,000 acres now being farmed by both Indians and whites—

The CHAIRMAN. That is under the old ditch. This ditch is much farther up, higher on the mesa, and covers a great deal more land.

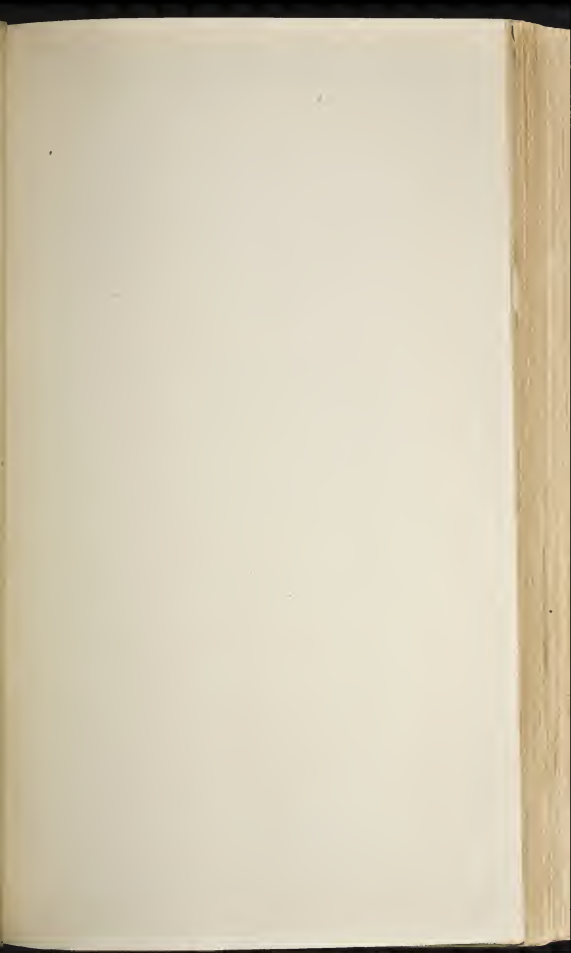
Mr. MERITT. The Pima Indians are very industrious. Heretofore they have been putting in brush dams on the Gila River for the purpose of getting even a temporary water supply, so that they could raise small crops. The two dams when constructed will furnish them with a permanent water supply and put those Indians on a sounder basis, so that they can have ample water to irrigate their lands. I know of no more deserving Indians in the United States than the Pima Indians. Heretofore they have suffered very severely because of the lack of water to irrigate their lands, and these projects will be of great assistance to those Indians.

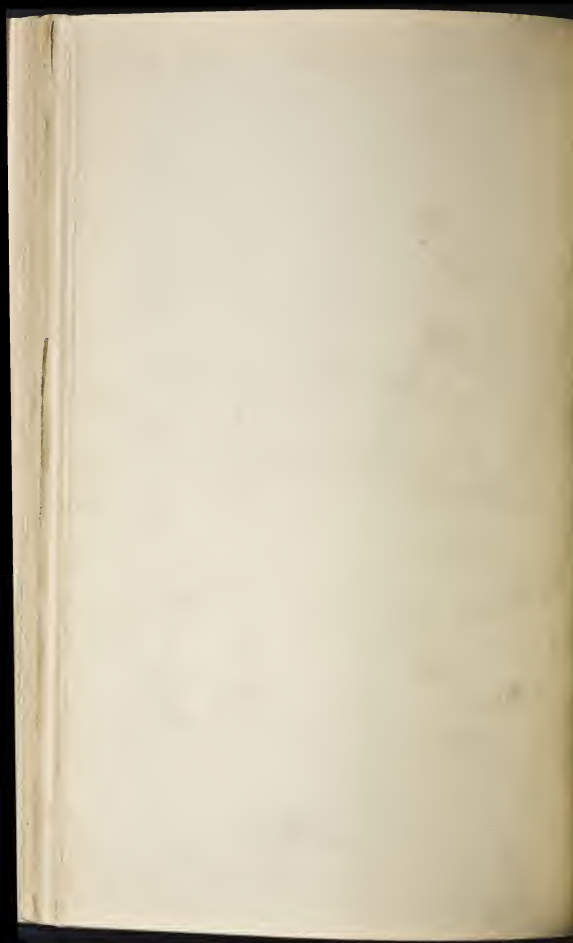
Mr. CAMPBELL. I don't know who is responsible, but I think when an item is inserted in an appropriation bill calling for the completion of a project, stating that the entire project will be completed within a cost of a given amount of money, that that should cover the expense, the contemplated expense of the project. Now, here it is contended that there is a contemplated expenditure—that there was at that time contemplated an expenditure that was not included in that estimate.

EXTRACTS FROM H. R. 18453, INDIAN APPROPRIATION BILL,
SIXTY-FOURTH CONGRESS, SECOND SESSION.

For completing the construction by the Indian Service of a dam with a bridge superstructure and the necessary controlling works for diverting water from the Gila River for the irrigation of Indian land and Indian allotments on the Gila River Indian Reservation, Arizona, as recommended by the Board of Engineers of the United States Army in paragraph two hundred and seventeen of its report to the Secretary of War of February fourteenth, nineteen hundred and fourteen (House Document Numbered Seven hundred and ninety-one), \$125,000, to be immediately available and to remain available until expended, reimbursable as provided in section two of the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page five hundred and twenty-two), the total cost not to exceed \$200,000.

For completing the construction by the Indian Service of a diversion dam and necessary controlling works for diverting water from the Gila River at a site above Florence, Arizona, \$100,000, to remain available until expended, the total cost not to exceed \$175,000, and for beginning the construction of the necessary canals and structures to carry the natural flow of the Gila River to the Indian lands of the Gila River Indian Reservation and to public and private lands in Pinal County, as provided in the Indian appropriation Act approved May eighteenth, nineteen hundred and sixteen, \$75,000, to remain available until expended; in all, \$175,000: *Provided*, That the water diverted from the Gila River by said diversion dam shall be distributed by the Secretary of the Interior to the Indian lands of said reservation and to the private and public lands in said county in accordance with the respective rights and priorities of such lands to the beneficial use of said water as may be determined by agreement of the owners thereof with the Secretary of the Interior or by a court of competent jurisdiction: *And provided further*, That the construction charge for the actual cost of said diversion dam and other works and rights shall be divided equitably by the Secretary of the Interior between the Indian lands and the private and public lands in said county; and said cost as fixed for said Indian lands shall be reimbursable as provided in section two of the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page five hundred and twenty-two); but the construction charge as fixed for the private and public lands in said county shall be paid by the owner or entryman in accordance with the terms of an act extending the period of payment under reclamation projects, approved August thirteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and eighty-six): *And provided further*, That said project shall only be undertaken if the Secretary of the Interior shall be able to make or provide for what he shall deem to be satisfactory adjustments of the rights to the water to be diverted by said diversion dam or carried in canals, and satisfactory arrangements for the inclusion of lands within said project and the purchase of property rights which he shall deem necessary to be acquired, and shall determine and declare said project to be feasible.





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OSAGE FUND RESTRICTIONS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

SIXTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 2065 and S. 2933

**BILLS TO MODIFY THE OSAGE FUND RESTRICTIONS
AND FOR OTHER PURPOSES**

MARCH 28, 29, AND APRIL 1, 1924

Printed for the use of the Committee on Indian Affairs



WASHINGTON
GOVERNMENT PRINTING OFFICE
1924

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OSAGE FUND RESTRICTIONS

FRIDAY, MARCH 28, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met, pursuant to call, at 11.30 a. m., in room 426, Senate Office Building, Senator John W. Harreld (presiding).

Present: Senators Harreld (chairman), Cameron, Frazier, Ashurst, and Kendrick.

The CHAIRMAN. Gentlemen of the committee, some time ago I introduced, at the request of the department, Senate bill 2065. It is my information that a similar bill was introduced in the House. The House has had extensive hearing on the House bill, and something like 10 or 15 days ago reported out the bill with various amendments. The House bill is still on the calendar of the House, as amended. In order to simplify the hearings, I introduced on March 6, which is just two or three days ago, Senate bill 2933, which is an exact copy of the bill as reported out by the House Indian Affairs Committee. So that in this consideration to-day we will consider jointly Senate 2065 and Senate 2933. I presume that really Senate 2933 will be the real basis of our consideration, because that is the bill that is now before the House, and is the one that is most likely to be adopted by the House.

(Senate bills 2065 and 2933 are here printed in full as follows:)

[S. 2065, Sixty-eighth Congress, first session]

A BILL To modify the Osage fund restrictions, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage tribe having a certificate of competency or having less than one-half Indian blood as indicated on rolls heretofore approved, his or her pro rata share either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from sale of oil or gas leases, the royalties therefrom, and any other moneys due such Indian received during each previous fiscal quarter, including moneys received during the fiscal quarter prior to the passage of this act and remaining unpaid, and so long as any such accumulated income, including rentals from allotted lands or any other funds due, is sufficient, the Secretary of the Interior shall pay to the adult members of such tribe not having a certificate of competency, \$1,000 quarterly, except where such adult members have legal guardians, in which case the amounts provided for herein shall be paid to the legal guardian, and to pay for maintenance and education to either one of the parents or to natural or legal guardians actually having minor enrolled and unenrolled members under twenty-one years of age personally in charge, \$1,000 quarterly out of the income of each of said minors, from their accumulated funds so long as sufficient, and so long as such income of the parent or parents of a minor having no income is sufficient, to pay to either of said parents or to natural

or legal guardians having the care and custody of unallotted minor children, \$500 quarterly for each of such minors in addition to the allowances above provided, all payments to legal guardians of restricted Indians to be expended when approved by the proper court and the Superintendent of Osage Agency, all payments to adults not having certificates of competency, including amounts paid for each minor, to be subject to supervision of the Superintendent of Osage Agency, and shall invest the remainder after paying all the taxes of such members, either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposit at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That any part of such remaining funds, including minors' funds, may be paid to adult Indians entitled to receive same for specific purposes, when authorized by the Commissioner of Indian Affairs, to be expended under his direction and supervision: *Provided further*, That at the beginning of each fiscal year there shall first be reserved and set aside out of the Osage tribal funds available for that purpose a sufficient amount of money for the expenditures authorized by Congress out of the Osage funds for the fiscal year: *Provided further*, That all just existing individual obligations of adults not having certificates of competency and of minors outstanding on March 31, 1921, and inclusive of that date when approved by the Superintendent of the Osage Agency shall be paid out of the money of such individual as the same may be placed to his credit in addition to the quarterly allowance provided for herein.

SEC. 2. All funds of Osage Indians accruing to their credit under the supervision of the Secretary of the Interior, may be paid either to legal or natural guardians, or administrators of the estates of such Indians, or direct to such Indians, or their heirs, in the discretion of the Secretary of the Interior under regulations promulgated by him. Lands devised to incompetent members of the Osage Tribe under wills approved by the Secretary of the Interior shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased with restricted funds shall not be subject to the lien of any debt, claim, or judgment except taxes.

SEC. 3. All that part of section 5 of the act of Congress approved March 3, 1921, providing as follows: "That the Secretary of the Interior is hereby authorized and directed to pay, through the proper officers of the Osage Agency to Osage County, Oklahoma, an additional sum equal to 1 per centum of the amount received by the Osage Tribe of Indians as royalties from production of oil and gas, which sum shall be used by said county only for the construction and maintenance of roads and bridges therein: *Provided further*, That the proper officials of Osage County shall make an annual report to the Secretary of the Interior showing that said fund has been used for road and bridge construction and maintenance only" is hereby repealed.

[S. 2933, Sixty-eighth Congress, first session]

A BILL To amend the act of Congress of March 3, 1921, entitled "An act to amend section 3 of the act of Congress of June 28, 1906, entitled 'An act of Congress for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes' "

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe of Indians in Oklahoma having a certificate of competency, his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of oil or gas leases, the royalties therefrom, and any other moneys due such Indian received during each fiscal quarter, including all moneys received prior to the passage of this act and remaining unpaid; and so long as the accumulated income is sufficient the Secretary of the Interior shall cause to be paid to the adult members of said tribe not having a certificate of competency \$1,000 quarterly, except where such adult members have legal guardians, in which case the amounts provided for herein may be paid to the legal guardian or direct to such Indian in the discretion of the Secretary of the Interior the total amounts of such payments, however, shall not exceed \$1,000 quarterly except as hereinafter provided; and shall cause to be paid for the maintenance and education, to either one of the parents or legal guardians actually having personally in charge, enrolled or unenrolled, minor member under twenty-one years of age, \$1,000

quarterly out of the income of each of said minors and so long as the accumulated income of the parent or parents of a minor who has no income or whose income is less than \$500 per quarter is sufficient, shall cause to be paid to either of said parents having the care and custody of such minor \$500 quarterly, or such proportion thereof as the income of such minor may be less than \$500, in addition to the allowances above provided for such parents. Rentals due such adult members from their lands and their minor children's lands and all income from such adults' investments not exceeding \$500 a quarter shall be paid to them in addition to the allowance above provided. All payments to legal guardians of Osage Indians shall be expended subject to the joint approval in writing of the court and the superintendent of the Osage Agency. All payments to adults not having certificates of competency, including amounts paid for each minor, shall be subject to the supervision of the superintendent of the Osage Agency. The Secretary of the Interior shall invest or deposit the remainder, after paying all of the taxes of those members whose funds are subject to his supervision, as provided by existing law: *Provided*, That any part of such remainder, including minor's funds, not to exceed \$10,000 may be expended for the benefit of such member of the tribe for the specific purpose of purchasing or improving a home, and any additional amount may be expended in the prevention of or cure of any member or minor afflicted with tuberculosis or in the treating or dangerous disease, when authorized by the Commissioner of Indian Affairs and expended under his direction and supervision: *Provided further*, That at the beginning of each fiscal year there shall first be reserved and set aside, out of Osage tribal funds available for that purpose, a sufficient amount of money for the expenditures authorized by Congress out of Osage funds for that fiscal year. No guardian shall be appointed except on the written application of the Secretary of the Interior for the estate of a member of the Osage Tribe of Indians who does not have a certificate of competency or who is of one-half or more Indian blood. All funds and other property heretofore or hereafter received by a guardian of a member of the Osage Tribe of Indians, which is theretofore under the supervision and control of the Secretary of the Interior by the title to which was held in trust for such Indian by the United States, shall not thereby become divested of the supervision and control of the Secretary of the Interior or the United States be relieved of its trust; and such guardian shall not sell, dispose of or otherwise encumber such fund or property without the approval of the Secretary of the Interior, and in accordance with the order of the county court of Osage County, Oklahoma. In case of the death, resignation, or removal from office of such a guardian, the funds and property in his possession subject to supervision and control of the Secretary of the Interior or to which the United States held the title in trust shall be immediately delivered to the superintendent of the Osage Agency, to be held by him and supervised or invested as hereinbefore provided.

Sec. 2. All funds of Osage Indians accruing to their credit and which are subject to supervision as above provided may, when deemed to be for the best interest of such Indians, be paid to the administrators of the estates of deceased Osage Indians or direct to their heirs, in the discretion of the Secretary of the Interior, under regulations to be promulgated by him.

Sec. 3. Lands devised to members of the Osage Tribe of one-half or more Indian blood or who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be alienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment except taxes, or be subject to alienation, without the approval of the Secretary of the Interior.

Sec. 4. Whenever the Secretary of the Interior shall find that any member of the Osage Tribe of more than one-half Indian blood, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may revoke such certificate of competency after notice and hearing in accordance with the rules and regulations as he may prescribe, and thereafter the income of such member shall be subject to supervision and investment as herein provided. Members not having certificates of competency to the same extent as if a certificate of competency had never been granted.

Sec. 5. No person convicted of having taken, or who causes or procures another to take, the life of an Osage Indian shall inherit from or receive any interest in the estate of the decedent, regardless of where the crime was committed and the conviction obtained.

SEC. 6. No contract for debt hereafter made with a member of the Osage Tribe of Indians not having a certificate of competency shall have any validity unless approved by the Secretary of the Interior. In addition to the funds heretofore authorized, the Secretary of the Interior is hereby authorized in his discretion to pay, out of the funds of a member of the Osage Tribe not having a certificate of competency, any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts of carelessness or negligence.

I would like to call the attention of the committee at this time, not for action, but to the fact that I have received a great many communications from Osage County, Okla., requesting that this committee, or a subcommittee of this committee, hold hearings on the ground in regard to this bill.

Here are the letters and the telegrams, if any of you want to see them. I am not going to make them a part of the record, but I want to submit them to the committee.

SENATOR CAMERON. Do all of those ask to hold hearings on the ground?

THE CHAIRMAN. Yes. There seems to be a good deal of interest in this bill. There is opposition to it, as well as in favor of it.

SENATOR CAMERON. If that is done it should be a joint committee.

THE CHAIRMAN. I presume we could go down for ourselves or appoint a subcommittee of this committee to hold the hearings, or it could be done by joint action of the two Houses. I will state, in that connection, that there is a joint resolution pending in both Houses now, authorizing the appointment of a subcommittee to inquire into Indian affairs generally, in Oklahoma. If that resolution is adopted, I think it will authorize holding hearings in the Osage Tribe on this question, as on any other question, affecting the affairs of the Indians.

SENATOR CAMERON. Didn't you state that the House has already reported on this bill?

THE CHAIRMAN. It is on the calendar of the House in the form that it is introduced here.

SENATOR CAMERON. It has been reported by the Committee on Indian Affairs of the House?

THE CHAIRMAN. Yes. It is a matter that the committee will have to pass on sooner or later, whether or not we will grant the requests that have been made for hearings on the ground, and I wanted to call your attention to the fact that that was being requested, and it is being requested pretty vehemently. I am not asking the committee to pass on any question this morning, but I think it is a very serious matter that should be passed on, the question of whether or not hearings will be had on the ground pertaining to this matter.

Personally, I have an open mind on this bill, and I am not committed to either side of it, but it is a question that we want some information on.

THE CHAIRMAN. Do you wish to make a statement, Mr. Burke?

MR. BURKE. I would like to make a very brief statement.

THE CHAIRMAN. All right; proceed.

STATEMENT OF MR. CHARLES H. BURKE, COMMISSIONER OF INDIAN AFFAIRS

MR. BURKE. This is a bill that originally was suggested because of some legislation that passed and became a law on March 3, 1921, at which time Congress extended the trust period on the Osage lands, as

to the mineral, to 1946, and when a bill for that purpose was being considered by the House Committee on Indian Affairs, and at the end of a session of Congress, just before the adjournment, the House committee incorporated in the bill legislation that restricted the amount of money to the Indians by limiting it to \$4,000 a year for adults and \$500 a year for children on the restricted class. It also provided that the Government should pay out of the funds of the individual Indians owing debts such amounts as they justly owed, so that they would start out of debt and thereafter would only receive \$1,000 a quarter for adults, and \$500 a year for children.

A large delegation of Indians came up here, including the council, I think, in 1921 and again in 1922, and this winter there was a crowd here, I think, of 77 if I remember rightly, including the council, and again a bill was worked out in the House, as was the case last year, that was generally acceptable to all concerned, so far as the Indians go.

Now, as the Senator has stated, there are people who are objecting to this legislation and it has even been suggested that we hold hearings on the ground. I can not for my life see where there is any question necessitating committees going down to the Osage country to inquire as to the conditions as to the proposed legislation.

The CHAIRMAN. It is claimed that these Indians who are represented here as being favorable to this legislation, are opposed to it, and the purpose of holding the hearings there is to find out what the Indians themselves really want.

Mr. BURKE. That is what we have been trying to do, and we have had these several delegations here, and the delegation that was here early in the winter, as I say, I think comprised about 77 members of the tribe, including the council. Now, a majority of the council are here now, and a few other Indians and I have had a conference with them, and I find that the Indians that objected to this bill, objected to it because they say they want their money; in other words, they do not want any restrictions; they want to be permitted to receive the full sum that each Indian is entitled to in the Osage Reservation without any restriction whatsoever. In other words, the Indians who have certificates of competency receive the full value of their share, which last year was, in round numbers, \$12,400. That was for the fiscal year, and in interrogating two or three of those who are here now as to their objections to this bill, it is based entirely upon the question that they do not want any restriction whatsoever. They want to be as they were originally, permitted to receive all of these moneys, and it seems very hard to convince them that if they can not get just what they want, that they had better accept what they can get, and this bill proposes to liberalize and make it possible to expend for such Indians as are under restriction some part of their money for different purposes, as the bill sets forth.

The bill does go into the question of changing existing law with relation to administration of individual estates through guardians. The Indians feel that it means a great expense to them, that it is unnecessary, and that they will be able to show to the committee that under these contracts there have been not only extravagances, but expenses that are unconscionable, and even going to the extent of being nothing less than endless, and so far as I have been able to get any information, the principal objection going to the change of the

law is on the part of the fellows who profit by reason of the law as it is now, and as the Indians said over at the House committee hearings, and, as I thought, very properly, some of these members of the council, when the hearings were held up for the purpose of permitting, I think the bar association of Pawhuska to appear, the Indians wanted to know what the bar association of Pawhuska had to do with their affairs, and it was a very pertinent inquiry, and I do not wish to express any disrespect whatsoever of the bar association of Pawhuska; I do not want to do that, but it does seem to me that the question for the committee to determine is whether or not this legislation that is in the interest of this tribe of Indians and reasonably satisfactory to the Indians, independent of those who may profit by the law being as it is at the present time, and we are prepared to show to the committee a condition of extravagance under the practice as it exists now with reference to administrators and guardians, etc., that we believe justifies a change in the law, and if there are those who are opposed to the change let them come here, and I do not see any reason why anything can be gained by going to Pawhuska except to cause delay, because the committee is not going to Oklahoma at present, or nor probably not during the session of Congress, because the presence of the Senators will be necessarily required here, and if you were to adopt the plan of going to Oklahoma, you might just as well postpone consideration of the legislation.

The Indians are very keenly interested in this subject. They have been coming to Washington here from time to time in large numbers, and it does seem as if they ought to be accorded an opportunity to be heard with reference to this subject.

The CHAIRMAN. Are there any other statements that anyone desires to make outlining or serving to outline the differences between the various parties who are favoring and opposing this legislation?

STATEMENT OF MR. ARTHUR WOODWARD, ATTORNEY FOR THE OSAGE TRIBE

Mr. WOODWARD. Mr. Chairman, the commissioner has very well covered the two leading features of this bill. There are a few other matters which are touched on in the bill, which are very important, but so far as I have heard, no objection has been raised to those provisions in the bill.

No one in Osage County objects to the Indians receiving more money, and that is one of the principal things that they are asking for. The fight on this bill is in relation to the restrictions which it would throw around guardians and administrators of dead estates. So far as I have known, in three years, in trying to get this legislation, no objection has been made to any part of it except the probate provisions.

Last year we had very extended hearings before the House committee. The bar association was represented before that committee for a week, and then they had further hearings before this committee. A bill was reported out, which failed of passage on account of the shortness of the session. This year we began our hearings about the middle of January in the House, and the Bar Association was represented there. Those hearings continued up to about the 1st or 3d of March, and the opponents objections were fully noted and

considered over there. They have had every opportunity to appear before this committee, if they desire, and state their side of the case.

We well know that the program of the opposition to this bill is to delay it. If they can get you gentlemen to agree to held hearings on the ground, we know that will kill the bill for this session. We also know that our chance for getting any legislation at the next session is very slim, because it is a short session, and we would probably be delayed for two years before we can get full consideration of this bill again.

That is why we ask to have it given consideration now, and, if possible, that it be given prompt action at this time. We think that we have been delayed sufficiently now to satisfy the largest requirements of everybody that wants to be heard in this matter.

The CHAIRMAN. Is there anybody here representing the opposition to this bill that wants to be heard?

Senator CAMERON. Personally I would be glad to go into this matter to a full extent, and do it as quickly as I possibly could. That is the way I feel about it, and I think the matter should be handled one way or the other, but I have got some matters this afternoon on the floor that I would like to look after, and I am willing to meet any time, day or night, that you will call the committee together.

The CHAIRMAN. Well, I was not aiming to go very much further to-day in this matter. I just wanted to get started and get, if possible, a statement from those who favor it and a statement from those who oppose it, in the nature of pleadings in the case, so that we would know something of the measure that we are dealing with, but it is now 12 o'clock and I presume we had better adjourn. To what time shall we adjourn? How many of you people want to be heard on this question? How many witnesses are here that will want to testify?

Mr. WOODWARD. Two or three Indians, I presume, will want to speak. Judge Humphreys, the probate attorney, will want to offer some evidence before the committee. Superintendent Wright and maybe one or two more here want to appear on behalf of the bill.

The CHAIRMAN. Shall we adjourn until to-morrow morning at 10 o'clock?

Senator CAMERON. That suits me.

The CHAIRMAN. All right. We will adjourn until to-morrow morning at 10 o'clock.

(Whereupon, at 12 o'clock meridian, an adjournment was taken until to-morrow, Saturday, March 29, 1924, at 10 o'clock a. m.)

OSAGE FUND RESTRICTIONS

SATURDAY, MARCH 29, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS.
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., Senator John W. Harreld presiding.

Present: Senators Harreld (chairman), Cameron, and Frazier.

The CHAIRMAN. Now, we will take up the Osage bill again, and Mr. Humphrey, I believe, wants to make a statement this morning.

STATEMENT OF MR. PAUL N. HUMPHREY

The CHAIRMAN. Mr. Humphrey, please state, if you can, before you finish, the material differences between the various parties in interest down there concerning this bill.

Mr. HUMPHREY. Mr. Chairman, that is the sole purpose for my appearance before the committee.

The CHAIRMAN. In the first place, you are an attorney at Pawhuska?

Mr. HUMPHREY. At Pawhuska; and a member of the Osage County bar.

Yesterday in the hearings you asked the proponents of the measure to submit a statement, and also asked the opponents of the measure to submit a statement for the purpose of getting the matter at issue. I have no facts or figures with me to substantiate or to furnish this committee. I am making a general statement only, to comply with your request that the issue be drawn and the committee may have knowledge of the two positions.

In the first place, Mr. Chairman, the Indians back home, not those present in this room, are opposed to this bill, as I am informed, for the reason that this bill does not give them more money, as the Indians had been led to believe would be the case. Also, that this bill places in the hands of the superintendent full power to supervise the thousand dollars a quarter and other funds which it does give to them, and they object to that feature of it on the ground that that power can be exercised to force the Indians to do anything, and if the Indians do not comply with the wishes of the superintendent, the superintendent can withhold these payments to the Indians, thereby forcing them to comply with his demands.

Their next objection is that this bill extends the jurisdiction of the department so as to include their rent moneys, and moneys received from their investments, and places the payment of these moneys under the jurisdiction of the department, a condition which

has not existed heretofore, and that this bill does not permit the payment to these Indians, these incompetent Indians, of any other moneys except where the Indian is sick or is about to die, and I take it that the Indians are like the white people, that they do not want to get sick or to die in order to get their money.

Another very serious objection on behalf of the Indians is that it takes away their power to contract. The competent full blood, the committee will recall, has full power to deal with his affairs, the same as the white man. The incompetent full blood, on the other hand, has to be under the supervision of the department, and this bill takes away his right to contract, which not only humiliates the incompetent Indian, but also, as he thinks, takes away one of his rights.

The bill also, by section 3, I think it is, ties up the inherited lands of these Indians. The competent Indian, under existing law, that inherits unrestricted land, takes that land unrestricted, and the Indian is objecting to it on that ground.

They object to it on the further ground that the bill gives the Secretary of the Interior the power to revoke a certificate of competency, and the Indians are opposed to it on that ground.

In addition to those general grounds of objection on behalf of the Indian, the white citizens and the residents of Osage County have other grounds of objection.

In the first place, this bill takes out of Osage County, the county in which all this money is produced, all these funds and places them on deposit in Government bonds in the Treasury of the United States. They feel that this money arises in Osage County and that a portion, at least, should be invested in the county, and then on the next ground that this bill does away with guardianships and does away with administrations of estates through the probate courts of Osage County.

Mr. Burke, in his opening statement yesterday, said before this committee that full hearings had been held in the House on this bill, and that he could not see any necessity for any further hearings.

I hesitate, gentlemen, to say what I am about to say, and yet I think this committee should be advised.

I want to preface my remarks by saying that for seven years I served as clerk of the Indian Affairs Committee of the House of Representatives under Mr. Stephens and Mr. Carter. At no time during my experience as clerk of that committee did I ever see so unfair a hearing held as has just been held in the House of Representatives, in so far as the opponents of this measure are concerned.

Chairman Snyder and other members of the committee were bitterly opposed to the opposition to this legislation. In each instance, when the opposition, if I may term it, attempted to present testimony to clear up points which the proponents had brought out, Chairman Snyder attempted to and in effect did discredit the witness.

For instance, we brought before the committee a district judge from the State of Oklahoma, who had been district judge for 20 or 25 years, 5 years of that time in Osage County. Chairman Snyder immediately proceeded to discredit Judge Wilson before his committee, by showing that Judge Wilson had resigned the lucrative office of district judge of Osage County to go into the more lucrative position of practicing law, leaving the inference plain, as Judge Wilson

thought, and as I thought, that the fees of attorneys in administration and these other cases were so much greater that he had to resign as district judge to get in on the so-called graft.

Not only did Chairman Snyder do that, but at the next session of the committee two members of the Oklahoma delegation arose in their seats in that committee and paid a very glowing tribute to Judge Wilson. It got that strong.

Now, at no time, in my judgment, has the side of the guardians or the side of the administration or the side of the opponents of this measure been presented to Congress. You gentlemen will realize that, with the mass of papers such as the department has here, with something like 435 guardianships in Osage County, it is impossible for us to know in advance what specific cases they are going to bring before you, so that we can meet their evidence; and, secondly, it is impossible for us to bring 435 guardianship cases pending in the courts of Osage County before this committee, and give you the concrete facts in each individual case. Each case must rest upon its own bottom, and I feel no hesitancy in saying that if this committee could personally go upon the ground in Osage County, with your power to subpoena witnesses and subpoena guardians, and there make their testimony, and there examine the records, that you would be absolutely satisfied with guardians and administrators in the Osage Nation.

Just recently the Indian Rights Association have given circulation to a report condemning very severely the courts of the whole State of Oklahoma. Particularly is that true with reference to the Five Tribes. However, they do have one Osage County case, the Martha Axe Washington case. We have gone into the record in that case, and if the records in the other cases are as they are in the Martha Axe Washington case, there is absolutely no foundation for such a report as the Indian Rights Association submitted. They have attacked the courts, and we feel that inasmuch as the courts of Osage County and the State are involved, and very grave charges have been made against them, before any legislation whatever is passed, this committee should make a personal investigation on the ground, not with a view, as Mr. Woodward would have you believe, of securing delay, but with a view of ascertaining what the true facts are with reference to guardianships.

Mr. Burke yesterday also stated in his opening statement that he would not see what right or interest the Bar Association of Osage County has in this legislation. I am in thorough accord with Mr. Burke. However, gentlemen of the committee, the bar association at no time, if we had been permitted to show it, were attempting to say that they had any direct interest. They were merely acting as representatives of the business interests of Osage County, and certainly nobody can say that the white people of Osage County do not have some interest in this matter.

I grant the members of the committee and I grant Mr. Burke that the Indians' consideration must be primary. That is your primary consideration, but, at the same time, when you are considering the Indian primarily, if you can also look after the interests of the white men that is the thing to do, because it is not the Indian who is building up Osage County; it is the white man who is making the improvements and improving the towns, and it is the white man who is

building up and developing the Osage property. Therefore I feel that they should have some consideration, and that their desires and their business interests should be considered secondarily by a committee in the consideration of any legislation pending before the Senate.

As I have said, I do not have and I am not prepared to go into a detailed defense at this time of what the proponents of the measure may bring before you. I do not know what cases they are going to bring here. I know, or at least I feel, that the cases they presented to the House Indian Affairs Committee were cases most favorable to their side of the question. I know of one case that they presented wherein the testimony showed that the burial expenses of an Indian was \$10,000—one case only, gentlemen. I know that it was shown, or attempted to be shown, that that was only one case, and that that expenditure, if the committee was on the ground and could subpoena witnesses, I am satisfied this committee would say that that expenditure could be justified. Yet as late as a week ago last Tuesday, on the floor of the House, Chairman Snyder says that it is a common thing for the burial expenses of an Osage Indian to amount to \$10,000. They have one case.

Likewise, with reference to guardianship and attorneys' fees, they submitted in the record on the House side 25 cases, among which was one case with eight and a quarter estates, other estates averaging from two on up, and they took those 25 cases as the average of the court costs and the guardians' and the attorneys' fees for the entire Osage guardianship question.

Those are unfair, Mr. Chairman, and are presented, as I view it, for the purpose of inflaming the minds of Congress as to the excessive costs of guardianship.

I mention those things for this purpose, gentlemen. If this committee will go to Osage County, or a subcommittee will go, there you have the full authority to subpoena witnesses, to examine individually each case to find out how much money the guardian received, for what purpose the money was spent, and, in addition to that, to find out what personal services a guardian was rendering a ward, and what benefit the ward was actually receiving by reason of the guardianship over and above the benefit he would receive if he was under the agency.

This is not a small matter. It is a matter involving millions, as I view it, and I feel that, in justice to the white citizens of the community, in justice to the Indians who are opposed to this legislation—and along that line I want to say that the Indians in Washington are not the only Indians of the tribe. I have heard this morning that the Indians—full-blooded Indians I am speaking about—are now circulating a petition asking this committee to come to Pawhuska. That is being circulated among the full-blood Indians, and is the result of a meeting they held last Thursday or Friday.

So that the Indians themselves, as well as the white people, are asking this committee, before they pass any legislation with reference to the Osage Indian Reservation, especially any such drastic legislation as this bill before you now is, that you come down there and personally investigate the matter.

That, Mr. Chairman, is in substance a general statement.

The CHAIRMAN. Let me ask you a few questions. Mr. Humphrey? Do I understand you to say that the Indians themselves do not see on the beneficial results of this legislation?

Mr. HUMPHREY. That is my information; yes, sir.

The CHAIRMAN. I understand that some time ago the bar association proposed a form of bill which they thought would satisfy the Indians and would be better in the interest of the Indians. Have you a copy of that bill?

Mr. HUMPHREY. I think I have in my grip at home. It is true the bar association did draw up a bill. However, about the 1st of March, at which time Judge Wilson and myself were here, we approached Mr. Snyder and requested an additional 15 days, by reason of personal business at home, to go home, and there, in company with Mr. Leahy and Mr. Wright, to draft a compromise bill.

Now, Chairman Snyder readily agreed to it, saying that there was no hurry at all to this legislation, and we did go home, and Mr. Leahy and Judge Wilson and myself did draft a compromise bill.

The CHAIRMAN. Who is Mr. Leahy?

Mr. HUMPHREY. T. J. Leahy, an attorney, who is in the room here.

The CHAIRMAN. Does he represent the chamber of commerce or the Indians?

Mr. HUMPHREY. I think possibly he is on the Indians' side.

Mr. LEAHY. I will be glad to make a statement later on.

The CHAIRMAN. Judge Wilson was the former district judge.

Mr. HUMPHREY. Yes, sir. He was the former district judge, and was here representing the Bar Association, and through the Bar Association the citizens of the county.

The CHAIRMAN. From what you know of the local situation down here, are the Indians themselves agreed on any part of this bill?

Mr. HUMPHREY. I will say, Senator, in reply, that there is only one thing in this bill that the Indians are at all concerned about, and that is money.

The CHAIRMAN. All of them want to get more money?

Mr. HUMPHREY. All of them want to get the money; yes, sir.

The CHAIRMAN. Are they led to believe that this bill gives them more money?

Mr. HUMPHREY. Yes, sir; they are led to believe that until they get back home, and then they get to threshing it out among themselves, and each time they have been here they have gone back and discontent has arisen in the tribe.

The CHAIRMAN. From your information concerning this matter, does this give them more money than they now receive under existing law?

Mr. HUMPHREY. From my information it does not, because this places the entire payment of the \$1,000 and all other moneys under the discretion of the superintendent of the Osage Indians.

The CHAIRMAN. Did I get the impression that you mean to say that the proponents of this bill, basing their arguments upon the fact that this gives more money to the Indians, have in that way got a lot of people to agree to this bill that would not otherwise agree to it?

Mr. HUMPHREY. I would hardly say that. I would say that they are getting 75 Indians here to the city of Washington, that those Indians are here under the influence of the department, the Great White

Father, and that the department is behind the bill and pushing the bill and naturally the Indians that are here and away from their home surroundings would be influenced by the recommendations of the department officials. That is the way I feel about it.

The CHAIRMAN. You stated that you were for several years clerk of the Indian Affairs Committee of the House?

Mr. HUMPHREY. Yes.

The CHAIRMAN. Can you give this committee a sketch of the history of this legislation? Originally, as I understand it, all of the handling of the funds of the Indians was in the department?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. And by a gradual evolution of legislation, the probate courts of the State of Oklahoma were given jurisdiction of certain parts?

Mr. HUMPHREY. By reason of the act of 1912.

The CHAIRMAN. In the Osage case, by reason of the act of 1912, but in the other tribes by some other legislation or some amendment?

Mr. HUMPHREY. 1908 in the other tribes.

The CHAIRMAN. That has been going on, then, for 16 or 18 years?

Mr. HUMPHREY. Twelve years—since 1912—in Osage County.

The CHAIRMAN. The present existing status of the laws of the State is the outgrowth of this evolution from 16 years ago?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. This bill proposes to destroy all that and reinstate in the department full control of the Indian moneys and funds. Is that right?

Mr. HUMPHREY. It in effect does that; yes, sir; by using the language that you may pay the guardian, or may pay the Indian, or may pay to the heir direct, which is in effect the same thing.

The CHAIRMAN. After living in the Indian Territory 12 years and practicing law there, I know something about it myself. I will ask you if it is not true that during this 16 or 18 years there has been quite a divided sentiment all over the eastern part of that State, where the Indians live, regarding the advisability of leaving in the hands of the department the full control of these funds, or the advisability of transferring to the court jurisdiction over these probate matters, and if the present law is not the outgrowth of the controversy over that very point?

What I want to do is to show by you that this is not a new question at all.

Mr. HUMPHREY. You are correct in that, Senator. This is not a new question, but so far as the Five Tribes is concerned, I can not advise you. I have only lived in Oklahoma since 1917 myself.

The CHAIRMAN. But you were clerk to the committee?

Mr. HUMPHREY. The only thing I know, as clerk of the committee, is that all of this legislation was passed before I was clerk. I was clerk from 1911 to 1917.

The CHAIRMAN. I was asking you these questions based on the fact that you were familiar with all of those things.

Mr. HUMPHREY. I was only clerk from 1911 to 1917.

The CHAIRMAN. During that time this very controversy was up in all the Five Tribes—in fact, all of the tribes, but in the Five Civilized Tribes especially.

Mr. HUMPHREY. The Osage 1912 Act is the act that conferred jurisdiction upon the probate courts of Oklahoma in Osage Indian matters.

The CHAIRMAN. Do you think that a code of laws that is the outgrowth of 16 or 18 years should be overturned in a day?

Mr. HUMPHREY. Absolutely not, and without further complete hearings, where you have full power to subpoena the witnesses and get the actual facts.

The CHAIRMAN. I agree with you on that.

Mr. HUMPHREY. That is the purpose exactly of this investigation.

The CHAIRMAN. Does anybody want to ask Mr. Humphrey any questions?

Mr. WOODWARD. I would like to know specifically whom Mr. Humphrey represents at this hearing.

Mr. HUMPHREY. I suppose, if the committee wants to know, that I represent 90 per cent—so far as I know I represent every business concern in Osage County, every bank in Osage County, every lawyer and merchant and doctor, and every other business interest of the town, so far as I know.

Mr. WOODWARD. Has Mr. Humphrey credentials to that effect that he wants to file with the committee?

Mr. HUMPHREY. I have not; no, sir. However, I could get them if necessary.

Mr. WOODWARD. Has he any credentials authorizing him to speak for the members of the Osage Tribe?

Mr. HUMPHREY. He has in effect. He is not speaking for members of the Osage Tribe. I am simply telling you what I understand to be the case with reference to what the members are doing, and I would refer the attorneys to a member of the council, Sam Barker, who is opposed to this legislation, and he is a member of the tribal council. I would also refer him to Edgar McCarthy, another member of the council.

Mr. WOODWARD. I would like to have Mr. Humphrey explain to the committee specifically what the objection is to this legislation, so far as the people are concerned whom he claims to represent.

Mr. HUMPHREY. If you strike out the word "claims" I think it would be a proper question.

The specific objection, as I said to begin with, of the white people to this bill is the fact that it takes this money out of circulation in Osage County, and under the statement of the commissioner before the House committee that money will be invested in Liberty Bonds, because that is what the commissioner says is the only way he will invest that money. So we are safe to assume that will be the effect of this legislation, that all of this money will be taken out of Osage County and placed in Government bonds, or on time deposits in the Treasury of the United States.

That is the first. The second is that it does away with guardianship and does away with administration.

Senator FRAZIER. From the testimony we had the other day, as to the amount of fees paid to these guardians, there must be a good deal of that money left there.

Mr. HUMPHREY. That is exactly what we want.

Senator FRAZIER. It seems to me that the bar association would be interested in that.

Mr. HUMPHREY. That is it exactly. That is exactly why we want this committee to come down and investigate matters. I tell you gentlemen frankly and fairly that the 25 cases submitted as a common run of cases in the Osage Nation by the department before the House committee is not a fair statement of the Osage guardianship question. That is why I want you come down there.

Senator FRAZIER. Is not that the same report we had at the Capitol the other day?

Thd CHAIRMAN. I do not know.

Senator FRAZIER. There was a statement made there—

The CHAIRMAN (interposing). That was in regard to the Five Civilized Tribes. That is true, but when you hear the other side of it you will hear that there have been frauds that the Department allowed over there in the Five Civilized Tribes. That has nothing to do with this really, except that it is the same question. The relevancy is this. In the Five Civilized Tribes they fought this matter out for 15 years. They have now raised the question there of taking the jurisdiction away from the probate court, and in that particular it is identical with this, but I think you will find that they were able to show more fraud in the Five Civilized Tribe cases than they do in the Osage, because Osage is only one county, while the Five Civilized Tribes cover 20 counties.

Senator FRAZIER. How large a reservation is that?

Mr. HUMPHREY. A million and a half acres. It is the entire county.

The CHAIRMAN. I want to say this, that I have always had doubts as to just where this authority ought to be lodged, but I know it is a mooted question in our State whether it is best for the Indians to leave it all under the jurisdiction of either one of these agencies, and it has been threshed out, as I know, for 16 years down there. I am not expressing an opinion now, but I do believe that the committee ought to hear both sides of the question, looking at it solely from the standpoint of the Indian first, what is to his interest, and where the interest to the community does not conflict with the Indians' interests, then the interest of the community ought to be considered, because the people are building up these communities for the Indians and making it possible for them to live in a civilized community, and therefore the Indian does owe, secondarily, a duty to the public generally. That is my position on it. However, I do not want to lose sight of the fact that the Indians' interest is primarily the first interest. That is my position.

Mr. HUMPHREY. We are not asking you to do otherwise.

Senator FRAZIER. I was wondering, when the attorney made the statement about the white people building up the county and the city to what extent, if any extent, was that building up that he speaks of at the expense of the Indians?

Mr. HUMPHREY. The Indian pays the same taxes as the white people do, on the personal property. He pays his proportion of taxes just the same. I did not mean to leave that impression.

The CHAIRMAN. There are no taxes paid on this impounded fund?

Mr. HUMPHREY. Oh, no. There are no taxes paid on that at all. And the Indians have their homesteads, constituting 160 acres which are exempt from taxation until 1931.

The CHAIRMAN. One of the reasons why lots of people favor the probate method is when this money is paid over to guardians and administrators, they invest it in property which does become taxable, and the department invests it in Government bonds and other things which are not taxable, and you can see there a reason why the community has an interest in it. I am just trying to get the whole thing before you.

Mr. HUMPHREY. That is all I had in mind, to comply with your request.

Mr. WOODWARD. With regard to the testimony of members of the bar association and their appearance before the House committee, I would like to have Mr. Humphrey state whether or not the bar association did not have a full and complete hearing before the House committee last year on this same proposition?

Mr. HUMPHREY. I would say not, Mr. Woodward.

Mr. WOODWARD. They did appear for a week before that committee and occupied the stand all during that week?

Mr. HUMPHREY. I was not here during that time, so I can not say personally what happened, but from reading the record I would say that that committee did not have the facts with reference to guardianship before them.

The CHAIRMAN. That bill was radically different from this one, wasn't it?

Mr. HUMPHREY. Yes; it was.

Mr. WOODWARD. Isn't it a fact that the bar association at considerable expense compiled in Osage County and filed with the House committee last year a complete digest of every guardianship case from 1912 down to that date, and that book is now on file in the House Committee on Indian Affairs? Isn't that so?

Mr. HUMPHREY. That is 1912, not 1812.

Mr. WOODWARD. 1912.

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. Didn't they have that information?

Mr. HUMPHREY. Yes.

Mr. WOODWARD. And isn't it a fact that this same House committee had a telegram sent to the probate judge of Osage County asking for a digest of all guardianship reports to be submitted to that committee?

Mr. HUMPHREY. Some such telegram was sent.

Mr. WOODWARD. And as a result of that telegram, considerably less than half of those reports were filed with the committee?

Mr. HUMPHREY. Something like 200 were filed.

Mr. WOODWARD. And isn't it a fact that the committee afterwards sent another telegram asking for the balance of those reports, and up to this time no further reports have been filed?

Mr. HUMPHREY. Not that I know of.

Mr. WOODWARD. I wanted to bring out the fact that the bar association has for two years been represented here and has presented their evidence before the House committee on this matter.

Mr. HUMPHREY. If I may reply to the gentleman, I will call attention to Mr. Roach's statement himself in the hearings with reference to the reports of guardianships which were sent in response to the request of the chairman of the Indian Affairs Committee. When the House Indian Affairs Committee attempted to digest these re-

ports, Mr. Roach, a member of that committee, made the statement that those reports were of no benefit whatever for the purpose of giving Congress any information as to what was being done; that they were unfair to the guardians as well as unfair to the department. I can find that in the hearings and insert it in the record if you want me to—his language. In other words, they telegraphed for certain information and the information they telegraphed for is not full and complete, so as to show up the true facts as they exist.

The CHAIRMAN. When this money is paid over to guardians and handled by guardians, under the existing law is the department consulted in any way about any investment that is made by the guardian?

Mr. HUMPHREY. Well, I have my idea, Mr. Chairman, and probably the proponents will have theirs. I say, absolutely yes, and I say further that in my practice as an attorney at no time do I ever for myself or for any of my clients secure an order through the county court of Osage County except that order has the written O. K. on it of Judge Humphrey, the probate attorney for the Osage agency. Since Judge Humphrey has been there now something like eight months, it takes his entire time in the probate court, where he spends all of his time, and in each case when a petition for any purpose is presented in a guardianship matter, Judge Humphrey is there and accepts service and appears on behalf of the office.

The CHAIRMAN. Does that apply to court orders making allowances for debts?

Mr. HUMPHREY. Yes, sir; for everything. Justice Humphrey is permitted to be heard, is in effect an adversary party to the proceedings, has full power in the event the judgment of the probate court is against him to appeal to the district court, to there try the case anew, and still if the judgment of the district court is against him to appeal it to the supreme court, and if a Federal question is involved to the Supreme Court of the United States. That is the fact as I view it. The other side may take issue with me on that question.

The CHAIRMAN. Is the department in any way consulted about who shall be guardian when a court undertakes to appoint a guardian?

Mr. HUMPHREY. They are not required to be consulted under existing law. A copy of the petition is filed with the department the same time that it is filed with the court. The department appears at the appointment of a guardian, with full power to object, but so far as any law requiring their approval is concerned, there is none.

The CHAIRMAN. If the guardian under the present law saw fit to buy a piece of real estate, what would be the procedure in the probate court?

Mr. HUMPHREY. He would have to come in first with his application for purchase, and he would have to serve that application upon the Osage Indian office. The court would have issued an order setting down the application for a hearing, would have to give notice of the hearing as required by our State law, and following State procedure all the way through.

The CHAIRMAN. What part does this probate attorney play in that?

Mr. HUMPHREY. The probate attorney would at all times appear on behalf of Mr. Wright, the superintendent.

The CHAIRMAN. He could oppose the investment?

Mr. HUMPHREY. Absolutely. And if he was not satisfied with the final ruling of the probate court, he could appeal to the district court.

Mr. WOODWARD. He could not stop that investment, could he?

Mr. HUMPHREY. Well, if three courts in the State would say that that investment was good and decided against you, it would naturally be my idea that it would be a good investment. I do not know that he could stop it. He could not stop it unless he could get some court to say it was not a good investment.

The CHAIRMAN. When property is invested in that way, it becomes taxable?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. For county purposes and other purposes?

Mr. HUMPHREY. And State purposes, and not only that, but it also redounds to the benefit of the other members of the tribe by reason of improvement of Osage County.

The CHAIRMAN. You mean improving the roads, or what?

Mr. HUMPHREY. No; I mean improving the county as a whole.

The CHAIRMAN. I ask you this question to bring out directly the interest that the business men of the community may have. If that was not done, I mean if it was not put in the hands of the probate court, for instance, if it is retained as this bill proposes in the department, would the department have authority to invest it in homes?

Mr. HUMPHREY. No, sir. Except under this bill; yes. This bill provides not to exceed \$10,000—

The CHAIRMAN. Would they have a right to invest in any other kind of property?

Mr. HUMPHREY. Absolutely not, as I see it.

The CHAIRMAN. What would they invest it in?

Mr. HUMPHREY. Government bonds, State, county, school, or municipal bonds, or place the money in time deposits in banks, as provided by the act of 1921.

The CHAIRMAN. The committee will understand I am bringing this out to show the interest of the chambers of commerce and those who are actively interested in this bill. That is the only purpose I have. I want to get the whole thing before the committee. Is there any complaint among the Indians that they do not get money enough from the department when it has control of their affairs, for their support?

Mr. HUMPHREY. I can only speak from hearsay, Senator. I do very little Indian business, practically as little Indian business as any attorney in the county, and I can only say that I have heard of Indians saying—I have no particular case in mind—that the department was not giving them enough.

The CHAIRMAN. Is that the reason why they insist all the time on more money being paid to them?

Mr. HUMPHREY. I think that is possibly one feature of it, and another is the fact that the incompetent Indian sees his full-blood brother who is competent getting his money, and I think he wants to get it also.

The CHAIRMAN. All the money is paid to those who have a certificate of competency?

Mr. HUMPHREY. Yes.

The CHAIRMAN. And they handle it to suit themselves?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. How many of these Indians are there approximately that are still considered as incompetent?

Mr. HUMPHREY. About 600.

The CHAIRMAN. How many of this tribe are there in all?

Mr. HUMPHREY. Originally there were 2,229.

The CHAIRMAN. About one-fourth of them, then, are still considered as incompetent; in other words, have no competency certificate?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. How do they, under the present law, go about getting a competency certificate?

Mr. HUMPHREY. He must make application. The Indian himself must make application in his own handwriting.

The CHAIRMAN. To the department?

Mr. HUMPHREY. To the department.

The CHAIRMAN. And the department passes on the question as to whether or not he shall be entitled to a certificate of competency?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. This bill really, then, is limited to the approximately 600 incompetents and their estates?

Mr. HUMPHREY. Except where an Indian who has heretofore received a certificate of competency is later, under state law, declared incompetent and a guardian appointed for him.

The CHAIRMAN. Has the state court that jurisdiction?

Mr. HUMPHREY. It has.

The CHAIRMAN. To declare incompetent an Indian that has been declared by the department to be competent?

Mr. HUMPHREY. It has, yes, and appoints a guardian. Whether or not it has got the jurisdiction, is a mooted question.

The CHAIRMAN. But it is exercising it?

Mr. HUMPHREY. It is exercising it.

Senator FRAZIER. How many attorneys have you in Osage County?

Mr. HUMPHREY. I would say 75.

Mr. WOODWARD. There are 103 on the roll.

Mr. HUMPHREY. That includes the county clerk and others who do not practice. A rough guess would be 75.

The CHAIRMAN. How many of them are actively practicing in Indian affairs?

Mr. HUMPHREY. I can not answer. I do not know what you mean by actively practicing in Indian affairs.

The CHAIRMAN. Have you any attorneys that do not take any Indian business at all?

Mr. HUMPHREY. No; I do not think so.

The CHAIRMAN. Are you acquainted with the terms of the bill that has been passed by the last Oklahoma Legislature, known as the Frye bill, which attempts to fix the charges that guardians may make and allowances to be made to attorneys?

Mr. HUMPHREY. No; I have not seen a copy of the law. I understand the governor signed it a week ago, but I have not seen it.

The CHAIRMAN. I have a telegram from the governor in which he thinks that that will remedy these frauds. What do you think about it?

Mr. HUMPHREY. I would like to say this, that while that law is applicable to Osage County, it being a State law, the fees which attorneys charge and receive in Osage County do not come up to the limitations of that State act.

Mr. WOODWARD. In that case, it would give you more than does the former law?

Mr. HUMPHREY. If the court would allow the Frye bill rate of fees, I would say that is true.

The CHAIRMAN. It attempts to fix maximum fees, but they might be less.

Mr. HUMPHREY. Yes.

Mr. WOODWARD. You are guardian for an Osage Indian or two, aren't you?

Mr. HUMPHREY. I am guardian for one, and have been since 1918.

Mr. WOODWARD. There is one point which you have not made clear, and I wish you would, if you are so inclined, and that is just the difference in the character of investment that you are permitted to make as a guardian and the character of investment that the department would be permitted to make under this law with the suggested amendments should it be passed by Congress.

Mr. HUMPHREY. That should be passed?

Mr. WOODWARD. Should it be passed by Congress.

Mr. HUMPHREY. I take it the Congress can authorize the Secretary of the Interior to make any investment. If you want to confine your question to existing law—

Mr. WOODWARD (interposing). I am coming to that in the next question. What character of investment can you make under the order of the court as legal guardian?

Mr. HUMPHREY. Only such investments as are permitted by State laws, which include real estate investments, not to exceed 50 per cent of the value of the real estate.

The CHAIRMAN. You have reference to loans?

Mr. HUMPHREY. Yes; real estate loans, and in addition to that such additional investments as are provided by the act of 1921, the same as the department has authority to make.

Mr. WOODWARD. Then if the present law were modified to include real estate investments, there would be no difference between what a legal guardian can do with the money and what the department can do with the money, would there?

Mr. HUMPHREY. I do not think I can answer it yes or no. I think I see the point of your question. There would be no material difference that I can see.

The CHAIRMAN. Under the State law applying to guardians generally, which also applies to Indian guardianships, the guardian would be allowed to loan on real estate up to 50 per cent of its value, taking a mortgage lien on real estate?

Mr. HUMPHREY. With the approval of the court.

The CHAIRMAN. Which must be approved by the court?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. Does that have to be approved by the Department of the Interior, too?

Mr. HUMPHREY. Under the 1921 act it would. It would not be approved, but all of the papers would have to be served on the Indian Office, with their right to appear and contest.

The CHAIRMAN. They would also have the right to buy real estate, wouldn't they?

Mr. HUMPHREY. I presume they would, yes, sir; with the authority of the court.

The CHAIRMAN. Is there any limitation by the State law on what funds in the hands of a guardian can be invested in, except that it must be invested with the approval of the court?

Mr. HUMPHREY. Yes. I do not have the State law with me. The State law is very specific about exactly what the duties of a guardian are and what investments he can make.

The CHAIRMAN. What are they?

Mr. HUMPHREY. I have not the statute before me, but they are very specific as to his duties and the additional bonds he must make with reference to investments or the sale of real property. The whole matter is set out in the statute, as well as in the rules of the Supreme Court.

Mr. WOODWARD. The real point of controversy over this bill between the people that you claim to represent and the proponents of this bill is over the probate question, is it not?

Mr. HUMPHREY. I think it was originally; yes, sir. I think now it has gotten beyond that point.

Mr. WOODWARD. Do you want the committee to understand that the prosperity of 90 per cent of the people of Osage County whom you represent depends upon the continuance of the guardianship system in its present form?

Mr. HUMPHREY. No. As I say, this bill now has gotten beyond the guardianship question.

Mr. WOODWARD. What I am trying to get at is this, will you explain to the committee just as specifically as possible the interest of the people whom you represent in opposing this bill, whether it is merely financial?

Mr. HUMPHREY. I think if you were present and heard my statement, I went into it very fully. If the chairman wants me to repeat it I shall be very glad to.

Mr. WOODWARD. You spoke about it very generally, but not specifically.

Mr. HUMPHREY. As I told the committee in the first place, I am not prepared to make specific cases and furnish facts and figures.

The CHAIRMAN. I would like for you to point out more specifically, if you can, how it is to the interest of the Indian to have the probate court to have jurisdiction?

Mr. HUMPHREY. That opens up a wide field, Senator. It enters into the personal touch that the Indian receives, and, as I say, the committee can only get that by a personal investigation and a personal subpoenaing before you of individual guardians and ascertain what the individual guardians in each and every individual case are doing for their wards. For instance, I have this in mind. I know one guardian that took an Osage ward, an unenrolled child 6 years of age, and has that child in his home or the home of his people, and is giving that Indian child the same education and the same care and attention that the other children receive in that home. That is one case, and if this committee was there where they could subpoena these guardians and bring these guardians before them, I have no hesitancy in saying that this committee would be absolutely satisfied that the Indian under guardianship was receiving full benefit for the money expended for him.

The CHAIRMAN. In what way does the department handle these individual cases? How do they look after the welfare of the individual Indian?

Mr. HUMPHREY. I do not think that they even contend that they do that to any great extent. The department spends its time—I do not mean this in a spirit of criticism—with the financial affairs of the Osage, and everybody knows that is sufficient to occupy most any branch of the Government. We, or at least I, do not feel that the department is equipped at this time to do anything else. Civil-service employees work from 9 o'clock until 4.30, and when 4.30 comes they are usually ready to quit and get out. As I say, these matters open up a big field, these questions here, and they are questions which can only be answered by a personal investigation.

The CHAIRMAN. Which, in your opinion, is more conducive to the civilization of the Indian himself, the incompetent and minor, looking to his future welfare and his future development as a citizen?

Mr. HUMPHREY. Well, looking toward his civilization, I see no objection to the guardianship feature, the fact that he is under guardianship. The majority of them are merely guardians of the estates.

The CHAIRMAN. I mean comparatively speaking now.

Mr. HUMPHREY. That is what I am trying to do. I really believe that by reason of the personal contact with the white man who is his guardian, that the Indian thereby derives a certain degree of civilization, and that he gets more that way than he would otherwise under the department.

The CHAIRMAN. Those are all questions that enter into in, in my judgment.

Mr. HUMPHREY. They do, Senator, very materially, and as I say, those questions open up a wide field, and a field wherein you ought to have before this committee, before you pass upon legislation of this character, full facts and figures, because I make the statement that no committee of Congress yet has received the actual facts and figures with reference to guardianship in Osage County.

Mr. WOODWARD. Whose fault is that?

Mr. HUMPHREY. Well, I tried to point out that in the last hearing, at least, it was the fault of the chairman of the Indian Committee of the House. We were prepared to show as far as we could at this distance, these facts, but were not permitted to do so.

Mr. WOODWARD. Was not Judge Wilson permitted to make any statement he wanted to before that committee?

Mr. HUMPHREY. No, sir.

Mr. WOODWARD. Wasn't he at those hearings given a special opportunity to make that statement?

Mr. HUMPHREY. Now, I do not want to get into an argument with you.

Mr. WOODWARD. You can answer yes or no.

Mr. HUMPHREY. He was; yes, sir; at 5.30 o'clock in the evening, after a week's hearing, every member of the committee tired, and Judge Wilson not knowing that he was going to be called upon to speak, and with but four members present.

Mr. WOODWARD. Hadn't he been on the stand several days before that time?

Mr. HUMPHREY. At which time the proponents of the bill occupied more time than Judge Wilson, but in his own time; yes, sir.

Mr. WOODWARD. Mr. Humphrey, another question. If the committee is tired of these questions I will stop at any time.

Senator CAMERON. Go on, as far as I am concerned.

Mr. WOODWARD. Isn't it a fact that if this committee decides to have hearings in Osage County that any legislation on this subject will be postponed for two years?

Mr. HUMPHREY. Oh, it will have to be postponed to the next session of Congress. That would be the effect of it; yes, sir.

Mr. WOODWARD. Isn't it a fact that there is an intensive propaganda going on in Oklahoma now to do everything possible to get this committee to postpone these hearings on the ground that they must have an investigation on this subject in Osage County?

Mr. HUMPHREY. I do not know.

Mr. WOODWARD. Isn't it a fact that there was a big meeting held with Congressman Howard, of the first Oklahoma district, in Tulsa, when this formula was outlined and organized and taken to Oklahoma City to the governor and attorney general, and is now being spread throughout Oklahoma to bring influence to bear on this committee?

Mr. HUMPHREY. No, sir. I was present at that meeting, at which Congressman Howard met with 25 citizens from throughout the county. He then explained to his constituents the opposition he had encountered in this bill; claimed to his constituents that this bill applied only to his district, and that in spite of his opposition members of the committee, of which he was also a member, had overruled him and forced the bill out over his objection. He called attention to his opposition on the floor and his objection to unanimous consent, and advised with his constituents along that line. There is no statewide propaganda that I know of. There may be since I left, but I do not know of it.

Mr. WOODWARD. Those gentlemen who oppose this bill had the same opportunity to appear here before this committee that the Indians have?

Mr. HUMPHREY. Absolutely. Mr. Woodward, and I am glad you mentioned that. The people who oppose this bill are not financially able, and it is impossible to raise the finances necessary to bring a delegation of 100 or 150 interested parties before this committee. The Indians come at the expense of the tribe, as I am informed and believe. That is true, isn't it?

Mr. WOODWARD. Some of them. The council does.

Mr. HUMPHREY. And they do not have to pay their individual expenses.

Mr. WOODWARD. Do you know, Mr. Humphrey, what it costs the Osage Indians to conduct this probate business annually?

Mr. HUMPHREY. I do not; no, sir.

Mr. WOODWARD. Would you believe it ran as high as \$400,000 a year?

Mr. HUMPHREY. I have no information about it.

The CHAIRMAN. Have you not heard about how much the estates aggregate that are handled by the probate court?

Mr. HUMPHREY. My recollection, Senator, is that that report filed with the committee a year ago showed something like seven or eight million dollars in assets in the hands of guardians at that time. That is my recollection of it; I may be in error.

The CHAIRMAN. There is one question I want to ask you referring to the question of immediate action on this bill. Are there such

frauds being committed in that county by the probate court as to demand immediate action on this bill?

Mr. HUMPHREY. Absolutely not, Senator; absolutely not.

The CHAIRMAN. And did I understand you to say that Indians and citizens as well down there feel like they did not have sufficient hearings on this bill in the House?

Mr. HUMPHREY. Not the Indians. The citizens felt that they had not. Acting through Judge Wilson they feel that they did not have any opportunity whatever to present their case in the House, and that they were not permitted to present their case. Judge Wilson feels that every time he got to the point of producing any evidence favorable to his contention he was cut off and was not permitted to testify along that line. That is the way he feels about it.

Senator FRAZIER. Is Judge Wilson still in the city?

Mr. HUMPHREY. No; he has gone home.

The CHAIRMAN. Does he want to be heard before this committee here?

Mr. HUMPHREY. I do not know.

Senator FRAZIER. Why didn't he come before this committee?

Mr. HUMPHREY. He could not get away last week; I do not know why.

The CHAIRMAN. I told him that this was only a preliminary hearing.

Mr. WOODWARD. The Senators can read what was done before the House committee, and read what Mr. Wilson said. Isn't it a fact, just to refresh your recollection, that Judge Wilson testified before that committee that the interests of the bar association in this matter were purely selfish?

Mr. HUMPHREY. No; he did not.

Mr. WOODWARD. Well, I will have to look it up.

Mr. HUMPHREY. He testified that he represented the bar association and through the bar association represented the business interests, and that the business interests were selfish or could be construed as selfish.

Mr. WOODWARD. What would be the effect on the bar association if Congress should pass this law?

Mr. HUMPHREY. I can not answer your question.

Mr. WOODWARD. Does this law abolish guardianships in Osage County?

Mr. HUMPHREY. In effect; yes, sir.

Mr. WOODWARD. In terms, does it?

Mr. HUMPHREY. No; in effect and actual practice, it would.

Mr. WOODWARD. Why do you say that?

Mr. HUMPHREY. Because I say that this bill says that the Secretary of the Interior may cause to be paid the \$1,000 to the legal guardians of the incompetents.

The CHAIRMAN. It is perfectly clear that this bill provides that the department may refuse to pay any of this money to the guardians.

Mr. HUMPHREY. Yes, sir; and here is the reason I said that it did abolish it, Senator, because if the department can pay \$1,000 to the incompetent Indian direct, there is no way for the department justifying itself for paying the \$1,000 to the guardian and letting the guardian get fees to be charged up against the estate.

The CHAIRMAN. You mean there is no need for the department to incur the additional expense of the fee?

Mr. HUMPHREY. Yes; there is no need to put the Indian to that expense.

Mr. WOODWARD. You made some statements about features of this bill—

The CHAIRMAN (interposing). This is good information, I think. I want to find out these things. Go right ahead.

Mr. WOODWARD. Mr. Humphrey can testify to it just as well as I can make a statement to the committee, possibly better. He stated that this bill did not give any more money to the Indian than the existing law. You are familiar with the existing law?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. The act of 1921 provides that the Secretary shall pay to each incompetent adult Indian \$1,000 per quarter. Am I correct?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. And he is not authorized to pay any more than \$1,000 a quarter to the Indian, is he?

Mr. HUMPHREY. That is all.

Mr. WOODWARD. And the balance of it is invested in Federal, State, and school bonds?

Mr. HUMPHREY. Yes.

Mr. WOODWARD. Or deposited in bank?

Mr. HUMPHREY. Yes.

Mr. WOODWARD. That is the limitation of that law?

Mr. HUMPHREY. Yes, sir.

Senator CAMERON. Is that the present law?

Mr. WOODWARD. That is the present law. However, Congress in passing that law neglected to place any restrictions on the rent money, and the rent money, under the practice and regulations of the department, is now paid unrestrictedly to the Indians?

Mr. HUMPHREY. Yes, sir, and interest on investments.

Mr. WOODWARD. No. I am coming to that.

Mr. HUMPHREY. All right.

Mr. WOODWARD. And that rent money, do you know how much it is a year on an average?

Mr. HUMPHREY. I do not.

Mr. WOODWARD. Do you know whether it would run two or three hundred dollars?

Mr. HUMPHREY. I do not.

Mr. WOODWARD. Do you think it would run over that amount?

Mr. HUMPHREY. I have no idea.

Mr. WOODWARD. You must have. What does it average in your case? Your ward has considerably more than one allotment, as I understand.

Mr. HUMPHREY. I would say \$600 a year.

Mr. WOODWARD. Say \$600 a year, which, however, is high. Are there any other funds that may be paid to the Indian under that act of 1921?

Mr. HUMPHREY. Yes.

Mr. WOODWARD. Are you of the opinion that the interest on investments is now paid under the act of 1921?

Mr. HUMPHREY. I think it is.

Mr. WOODWARD. I will correct you on that. It is not.

Mr. HUMPHREY. It is if the Indian has investments himself.

Mr. WOODWARD. This law provides that he shall be paid \$1,000 a quarter, doesn't it?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. That he shall receive his rent money?

Mr. HUMPHREY. Yes, sir; up to \$500 a quarter.

Mr. WOODWARD. And \$500 a quarter from interest on investments, does it not?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. Isn't that \$2,000 a year more than he is getting at the present time?

Mr. HUMPHREY. That is all paid under the supervision of the department, and the department can withhold and not pay a cent if they do not see fit.

Mr. WOODWARD. Please read that to the committee, from the bill, because I deny the statement. I don't want this bill misinterpreted.

Mr. HUMPHREY. On line 5, page 3, it says:

All payments to adults not having certificates of competency, including amounts paid for each minor, shall be subject to the supervision of the superintendent of the Osage agency.

Mr. WOODWARD. But is there anything in that which prohibits the payment or which exempts the department from the mandate on the previous page that they shall pay this money?

Mr. HUMPHREY. Whenever you pay it under supervision—you say they shall be paid, and in another part of the law it says that they shall pay it under supervision.

Mr. WOODWARD. Do you interpret that to mean that the Secretary of the Interior can withhold all of this money from the Indian?

Mr. HUMPHREY. I do, if there is something in his mind which he may consider just cause.

Mr. WOODWARD. Is not that the same language used in the act of 1921?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. Has any money been held up under that act?

Mr. HUMPHREY. I understand so.

Mr. WOODWARD. Do you know of any case?

Mr. HUMPHREY. I do. That was Shinn's case. He brought a mandamus case in Oklahoma City.

Mr. WOODWARD. Do you know that the \$1,000 a quarter was withheld in that case?

Mr. HUMPHREY. I do not. I am going on hearsay.

Mr. WOODWARD. Is that your interpretation of that act?

Mr. HUMPHREY. I have in mind the case in which an attorney named Shinn brought a suit to mandamus the Secretary to pay him this \$1,000, which was not being paid.

Mr. WOODWARD. Do you know of any other cases?

Mr. HUMPHREY. That is the only case I have in mind.

Mr. WOODWARD. Do you know the circumstances surrounding that case?

Mr. HUMPHREY. I do not.

Mr. WOODWARD. Do you refer to the Nick Webster case?

Mr. HUMPHREY. I do not know the name of the Indian.

Mr. WOODWARD. You do not know whether there was any other law that had a bearing on that case?

Mr. HUMPHREY. I do not.

Mr. WOODWARD. In addition to the payments that I have referred to here, the present law permits the payment of \$500 quarterly on account of enrolled minors, doesn't it?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. Isn't it a fact that this increases that payment to \$1,000 a quarter?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. There is no provision made in the present law for payments on behalf of enrolled minors, is there?

Mr. HUMPHREY. I think you are paying them \$500 a quarter.

Mr. WOODWARD. I will have to correct you again. I see you are not familiar with our existing law.

Mr. HUMPHREY. That is true. I was referring to guardians of minors.

Mr. WOODWARD. Then they do not under the existing law?

Mr. HUMPHREY. No, sir.

Mr. WOODWARD. Unenrolled minors, I am talking about?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. This law permits the payment of \$500 on account of each unenrolled minor?

Mr. HUMPHREY. To the parent.

Mr. WOODWARD. That is much more than they are receiving now.

Mr. HUMPHREY. Under supervision, as it says. I state this by reason of former requirements of the department, the parent would undoubtedly be required to give an itemized expenditure of the way he spends the \$500 a quarter.

Mr. WOODWARD. Do you know whether or not the department is requiring an itemized account of the expenditures made on behalf of minors?

Mr. HUMPHREY. I do not think they are. They did, I think, up to October 1, 1920.

Mr. WOODWARD. Not since then, however. Isn't it a fact that this bill makes an additional allowance of \$10,000 for the purchase and improvement of a home not authorized by the present law?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. That is an addition?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. And it also makes provision for any amount in case of illness, which is not provided under existing law?

Mr. HUMPHREY. Yes, sir.

Mr. WOODWARD. Then is it not a fact that your first statement was a mistake as to the contents of the present bill?

Mr. HUMPHREY. I still stick by my first statement, that these payments are all made under supervision, with power in the superintendent to withhold any or all of these payments.

Mr. WOODWARD. That is merely your opinion?

Mr. HUMPHREY. That is what I stated.

Mr. WOODWARD. I wanted to bring out that there were many provisions in this bill not in existing law.

Mr. HUMPHREY. I have stated that in the beginning.

The CHAIRMAN. These payments referred to here only apply to incompetent Indians, and do not involve their entire estates. It is just payments. I mean, there are other moneys kept in the department other than those provided by this law, other than these quarterly payments?

Mr. HUMPHREY. Some of the Indians, not all of them, have what we call a trust fund on deposit in the Treasury.

Mr. WOODWARD. I think the Senator means, do these payments exhaust all that the Indian has each quarter?

Mr. HUMPHREY. It does the competent, but not the incompetent.

The CHAIRMAN. I say, so far as the incompetent Indian is concerned these payments under the present law are made to him provided he has that much to his credit?

Mr. HUMPHREY. That is it.

The CHAIRMAN. And if he has any more than that, that is kept?

Mr. HUMPHREY. That is kept and impounded by the Government.

The CHAIRMAN. Under the present law, the quarterly payments and so forth to incompetent Indians may be paid to a guardian, if one is appointed, or is the department compelled to pay them?

Mr. HUMPHREY. Two courts have said that they must be paid by the Government.

The CHAIRMAN. Under the proposed law the department would have the right to pay them to a guardian if it wanted to do it, or they could pay it direct to the parents of the child?

Mr. HUMPHREY. Or direct to the Indian, yes, sir; with the proviso that in no event could they pay to the guardian more than \$1,000 a quarter under the proposed bill.

The CHAIRMAN. What supervision would there be of this \$1,000 per quarter under the proposed law that would in any way protect the Indian from dissipating that \$1,000 a quarter?

Mr. HUMPHREY. You mean the incompetent Indian that has no guardian?

The CHAIRMAN. Yes.

Mr. HUMPHREY. It is all paid out under supervision.

The CHAIRMAN. That supervision that you read here in section 3 gives to them the power to refuse to pay that, then, to a man who in the judgment of the representative of the department could not properly handle it?

Mr. HUMPHREY. I feel that would be the case; yes, sir.

The CHAIRMAN. Under the existing law he would have to pay it to the guardian and the guardian would have the right to determine how it should be paid out for the benefit of the Indian?

Mr. HUMPHREY. With the consent of the court; yes, sir.

The CHAIRMAN. With the consent of the court and in the court giving that consent the department is represented by the probate attorney?

Mr. HUMPHREY. Yes, sir. May I call your attention to the further fact that the guardian is under bond double the amount of his personal property, and I would like to call your attention to the further fact that in all the history of guardianships in Osage County not one cent has been lost to an Osage Indian's estate by reason of a defaulting guardian. I do not think that statement will be controverted by the Indian Officer.

The CHAIRMAN. If any frauds, then, have been practiced in probate proceedings it has been done with the approval of the court?

Mr. HUMPHREY. Well, I would hardly put it that way, that the fraud has been done with the approval of the court. It has been put over the court, or put over the department's representative.

The CHAIRMAN. But what I mean to say is, if any proof is offered to show that improper expenditures have been made, all those improper expenditures have the approval of the court before they are made?

Mr. HUMPHREY. Yes, sir; and not only that, but I venture the assertion that in each case you will find that copies of all applications and all orders were served upon the Osage Agency, and the Osage Agency had an opportunity to be present in court and present their objections to the expenditure.

The CHAIRMAN. The present bill takes away that protection and substitutes for it the will of the department as to whether or not it shall be paid direct to the incompetent Indian at the rate of \$1,000 a quarter?

Mr. HUMPHREY. Yes, sir.

The CHAIRMAN. I just wanted to get that fixed in my own mind.

Mr. WOODWARD. Mr. Humphrey, is your opinion in regard to the interpretation of this law the opinion of the bar?

Mr. HUMPHREY. I can not answer the question. I have never talked to the bar about it.

Mr. WOODWARD. As a matter of fact, the way you interpret this law is a part of a propaganda being spread among the Osages to get them to oppose this bill?

Mr. HUMPHREY. I do not like that word "propaganda." I want to say that I am not a party to any propaganda, or anything of the kind.

Mr. WOODWARD. I do not like the word myself. Don't you know it is a fact that representations are being made to members of the tribe by this 90 per cent of the business interests which you represent, along the line you have suggested here, which is an incorrect interpretation of law, in order to get the Indians to oppose it?

Mr. HUMPHREY. No, sir; I do not.

Mr. WOODWARD. I do not believe I have anything further.

The CHAIRMAN. I said yesterday that I had received a bunch of telegrams from patriots asking that hearings be held in Oklahoma on this question and protesting against the passage of the bill. I am going to introduce into the record some of them that were signed by Indians. I am not introducing any of those except those that were sent me by members of the Osage Tribe.

Mr. WOODWARD. I would be very glad to have them all introduced, Senator.

The CHAIRMAN. I have no objection, but I just do not want to make up an expensive record.

Mr. WOODWARD. The reason I suggest that is because we have been here at great expense at various times, laying our cards right on the table, so you know exactly our case, and we would like to have a chance to explain, if there is any possible explanation, the opposition to this bill. If we do not know who is opposing it, of course we have to leave the inference that it is all right, that the opponents are disinterested parties, that they have no financial benefit to be derived.

The CHAIRMAN. If the committee wants it, I will introduce all of these.

Senator CAMERON. I would put them all into the record.

The CHAIRMAN. I will first introduce this signed by members of the Indian tribe. Here is one from Hominy, Okla., which reads as follows:

Hon. J. W. HARRELD,

*Chairman Senate Committee on Indian Affairs,
Washington, D. C.*

DEAR SIR: We the undersigned full-blood adult members of Osage Indian Tribe hereby request the Senate committee to consider our wishes in Senate hearing now being held. We request our Osage affairs to be thoroughly investigated before any legislation is passed.

We also wish to state that we are not in favor of House bill 5726 becoming a law. We wish to say that our chief and some members of council are not representing wishes of Osages, but are carrying out wishes of Indian Bureau. We insist that we be given a fair hearing and an opportunity to present our wishes to committee.

Respectfully,

SAM BARKER.

ROBERT MORRELL.

JOE SHUNKAHMOLAH.

ROSS MAKER.

JOHN STARR.

HENDERSON MOHKAHSAPPY.

CLAUDE SMITH.

DAN G. WEST.

LITTLE STAR HALL.

GOODE JOSEPH MASON.

TOM BIGCHIEF.

HERMAN MCCARTHY.

NEWELLA KAHHEKANAHSH.

Here is another from Hominy, Okla., addressed to me:

DEAR SIR: The chief and members of the council are coming to Washington for hearing in bill known as Snyder bill, H. R. 5726. The chief claim that this is Osage bill. The majority of the restricted Osage Indians are not in favor of Snyder bill, besides of chief and members of the council are not representing the wishes of Osage Tribe, and seems though that they are representing the wishes of Indian Bureau. We are asking for a joint committee investigation of our affairs before any legislation should be made, because too much under supervision our affairs by the Indian Bureau and the agency. We want our annuity payment should be made as provided in act of June 28, 1906. Some outside members of the tribe will accompany the chief and council in the hearing which is to come before the Senate committee.

EDGAR MCCARTHY.

ROMAN LOGAN.

TOM BIG CHIEF.

ROBERT MORRELL.

JOE SHUNKAHMOLAH.

ROSS MAKER.

SAM BARKER.

WALTER MARTIN.

There are some others. These I have just received in the last few days. I also would like to put into the record at this point a statement made by John Abbott, who says he is a member of the Osage Tribe of Indians, and interpreter for the Osage Agency. This statement is sworn to, and if there is no objection I would like to have it put into the record. You will find that it is a long the lines of these telegrams but too long to read, and if the committee wants it done all these letters and things can be put right into the record. I have not got time to read them.

STATEMENT OF JOHN ABBOTT, MEMBER OF OSAGE TRIBE OF INDIANS, RESIDENT OF HOMINY, OKLA., AGE 43; FORMER MEMBER OF THE COUNCIL AND ONCE INTERPRETER FOR THE OSAGE AGENCY

Mr. Chairman and gentlemen of the Senate Indian Committee, I will make a statement on behalf of the Restricted Osage, full-blood Indians, 225 of them. I will make my statement as brief as possible.

Our ancestors centuries ago used to tell us, "The Great Spirit has put us Indians on this land and said it was our land." They also said the Great Spirit said "Watch for my signs." As you people do not believe in the Indian signs, I need not tell you why and how we Indians know these signs; they also used to

tell us, "A strange people will come and their greed will be great and they will see justice." They also said Christopher Columbus came without any invitation and said he had found a new world. This world may be as old as Europe, we do not know and he did not know. If we should start east to find the rising sun and come to Europe and say we had found a new world, they would run us back, so, Mr. Chairman and gentlemen of the Senate Indian Committee, there were about 76 of us, a mission in Washington in the month of January, before the House Committee on Indian Affairs, and we told them what our wishes were.

Some 18 years ago, Mr. Chairman and gentlemen of the committee, we allotted our land equally, segregated our funds equally, in what is known to-day as the Osage allotment act, dated June 28, 1906. To my way of thinking, Mr. Chairman, that is the only law we should have had, but as I have said, "you will see justice." Both Houses of Congress passed an amendment on April 18, 1912, taking the jurisdiction away from the Secretary of the Interior and putting same in hands of the probate court, Osage County, State of Oklahoma. That act, Mr. Chairman, was passed under the influence of the bar association of Osage County, Okla., for their own benefit. There has been dissatisfaction among the members of the Osage Indian Tribe, especially the full-blood Indians, who can not understand the laws of Oklahoma.

Mr. Chairman and gentlemen of the committee, 420 full-blood members of the Osage Indians have legal guardians, appointed by the court of Oklahoma and still we are asking you to modify the act of March 3, 1921. That act, Mr. Chairman and gentlemen of the committee, was a great benefit to my people as a whole, because we had reserved the oil, gas, and mineral rights under the act of June 28, 1906, for the benefit of the younger generation; and Congress extended the mineral period 15 years longer. To my way of thinking you have done a great justice to the Osage Tribe of Indians, as Members of Congress, in what is known as the extension bill. Mr. Chairman, in that act an amendment was put on the bill to withhold a certain amount of the money from the restricted Indians.

Some members of the congressional committee, headed by Mr. Snyder, chairman of the Indian House Committee, visited the Osage Tribe of Indians as near as I can remember May 11, 1920, investigated the condition of the Osage Indians financially; previous to that time the restricted Indians were heavily in debt, some in the neighborhood of \$800,000. I wanted to appear before them, but was out of the city at that time at Albuquerque, where my daughter had been in a sanitarium on account of sickness. They were in debt, and no money deposited in the banks to their credit, only four or five had money in the banks; and for that reason the congressional committee of Indian Affairs took a stand that there ought to be some provision made to save some of the money for the future. But the old members, the old Indians, full-blood Indians, at the age of 60 and on ought to receive their money in some form because they are opposed to any supervision. It was handed down to them through their ancestors and they are entitled to the money while they are living; but the time was too fast for them, they could not see where the Government was trying to protect them. They had plenty of other means, such as lands, to fall back on if this royalty ran out; they will pass away in a short time.

At the present time, Mr. Chairman and gentlemen of the Committee they are dissatisfied with that law and still it is one of the best laws ever passed by Congress. About eight or nine Osages and some unscrupulous people among them wants them to get all their money; for some reason they are telling Osage Indians that Congress had no right to pass such a law; that the money belongs to them; that they ought to have it to spend as they see fit. Those people are opposed to any legislation that is pending in Congress.

My distinguished friend, E. B. Howard, who represents us in the first district, made a speech against the compromise bill in the House. Of course, my distinguished friend, Mr. Howard, a Member of Congress, knows our wishes, but at the same time I think he must be working for some element for his own good. I have told the House Committee on Indian Affairs that we have been there, in Washington, three or four times begging and crying for legislation, and still we can not get any modification.

Mr. Chairman and gentlemen of the committee, one of the members of the Osage Tribe of Indians who was in Washington with a delegation—I have mentioned him in my statement before the House Committee on Indian Affairs; his name was Wah-sho-she—was a member of the Osage council. At the time of his death, one month ago to-day, he had accumulated over \$100,000 to his credit in cash, yet he died as a pauper, and still he had \$100,000 that he could not use for his own benefit; that is an illustration that I am giving you, Mr. Chairman and gentlemen of the committee. Now his money will go one-half

to his wife and one-half to the other heirs, and it will be spent; thrown away; wasted.

Mr. Chairman and gentlemen of the committee, at hearings in the House Committee on Indian Affairs, the bar association was represented; they told their story of opposition to the act, saying that the Indian Bureau could not handle the Indians as well as the guardians could; that all the great wealth was being invested by the guardians in real estate and farm loans and getting 7 or 8 per cent; and that the guardians were looking after their wards any time of the night; they came to see their wards and cared for them. Now, Mr. Chairman, that is not correct; because I know of an instance where four young Osages, two young men and two young girls, were murdered, and one of them happened to be my brother. And I have spent at least \$5,000 trying to find the guilty person, but have failed up to this time, and still my good friend, the Indian Bureau, has not helped to find the guilty person, yet in each instance they had a guardian, yet they were murdered. This is going on all the time, Mr. Chairman. It reminds me of 308 years ago when the Indians sold Manhattan Island for \$24 worth of beads and \$5 worth of war paint and the white man said it was a good bargain.

Mr. Chairman I am sorry that I can not appear before you in person on account of my wife's sickness; I am in the city of Claremore, Okla., but I hope that you will come to some conclusion and give the restricted Indians some relief, so they can use their money for buying homes, for health in case of sickness, or buying property or stock, something that will accumulate money for them under supervision. I hope you will give the Osage delegation, who are in Washington now, headed by Chief Red Eagle, ex-Chief Bacon-rind, and other members of the Osage Tribe who may be there, consideration. They are the real representatives of the Osage Indians, duly elected by their people, and whatever they do and say, they are representatives, speaking for the Osage Tribe of Indians, and as I have said, you are the body of men making the law not only for the Indians but for everybody in the United States as well as us. I hope you will consider them and accomplish something before this session of Congress which will benefit my people as a whole.

Mr. Chairman and gentlemen of the committee, that is all I have to say; I have made my statement, and I thank you, Mr. Chairman, and each member of the committee.

JOHN ABBOTT.

Subscribed and sworn to before me this 24th day of March, 1924.

(SEAL.)

CHAS. W. HARDY, Notary Public.

My commission expires January 19, 1928.

TULSA, OKLA., March 24, 1924.

Hon. J. W. HARRELD,
United States Senate, Washington, D. C.:

Before Senate Indian Committee completes hearing on Osage bill would appreciate a personal investigation by you on the ground, to save expense of numerous citizens coming to Washington and in the interests of beneficial legislation to the Indians and the entire community.

VERNON WHITING.

FAIRFAX, OKLA., March 21, 1924.

Hon. J. W. HARRELD,
United States Senate, Washington, D. C.:

The Snyder bill as reported to the house from the House committee is a vicious one and is not to the best interests of the Osages. Conditions in the administration of Osage estates have been grossly misrepresented. We want a full, open, and fair hearing. To get the real facts, an investigation by a special committee should be made in Osage County, where full access could be had to record and witnesses.

Fairfax Chamber of Commerce, B. L. R. Heflin, president; W. J. Mahan, secretary; A. D. Rochau, H. M. Maxwell, H. O. Ostermeyer, Pitts Beaty, J. N. Fly, M. B. Prentiss, W. C. Spurgin, W. J. Moore, D. L. L. Hubler, Homer Huffaker, D. E. Johnson, A. C. Hunsaker, S. E. Tate, Chas. P. Howell, C. E. Ashbrook, F. C. Hoefer, F. O. Quarles, W. A. Hubler, R. R. Rodd, W. G. Lynn.

PAWHUSKA, OKLA., March 27, 1924.

Hon. J. W. HARRELD,
Chairman Senate Indian Committee, Washington, D. C.:

Lions Club unanimously passed resolution protesting against passage Snyder bill and requesting investigation by joint committee. Copy of resolutions mailed.

A. F. STEPHENSON, *Secretary.*

HOMINY, OKLA., March 27, 1924.

Senator J. W. HARRELD,
Washington, D. C.:

Large portion of Osage Indians and business interest of Osage County oppose present Osage bill as detrimental to both Osages and business interests and ask that you defer action on bill till congressional committee comes here and learns real facts.

HOMINY BUSINESS ASSOCIATION.

CARL T. MATTHEWS, *President.*

FAIRFAX, OKLA., March 27, 1924.

Senator J. W. HARRELD, *Washington, D. C.:*

Dr. M. B. Prentiss, our representative, on way to confer with you relative Osage bill.

FAIRFAX CHAMBER COMMERCE,
L. R. HEFLIN, *President.*

PAWHUSKA, OKLA., February 7, 1924.

Hon. J. W. HARRELD,
*Chairman Indian Committee, United States Senate,
 Washington, D. C.:*

Bar association passed resolution requesting committees of Congress to ask for Federal grand jury investigation, under authority act April 18, 1912, or full sub-committee hearing at Pawhuska, of departmental and court handling of Osage Indian moneys before enacting any new law. Resolution follows by mail.

OSAGE COUNTY BAR ASSOCIATION.

OKLAHOMA CITY, OKLA., March 26, 1924.

Senator J. W. HARRELD,
Care Senate Office Building, Washington, D. C.:

From best information, believe it proper, right, and imperative that local investigation in Osage County be made by your committee prior to any final action on Osage Indian bill.

A. C. ALEXANDER.

PAWHUSKA, OKLA., February 16, 1924.

Hon. JOHN W. HARRELD,
United States Congress, Washington, D. C.:

We urge the passage of legislation now being asked for by the Osage Indians. We express our confidence in J. Geo. Wright and his associates at the Osage Agency, Pawhuska.

S. H. WILSON,
Chairman Republican Committee Osage County.
 A. B. BURRIS,
Secretary.
 TOM PENNELL,
Treasurer.

FAIRFAX, OKLA., March 24, 1924

Senator J. W. HARRELD,
Senate Building, Washington, D. C.:

Opponents to Snyder bill telephoned me from Pawhuska. Hearing on bill up before your committee March 28. Was hoping hearings could be postponed until after district and State conventions. Very vital to your political future in Osage County that you show your friendliness toward what a vast majority of both whites and Osages here want. We want chance for impartial hearing. Can not you get a subcommittee sent here for that purpose? If advisable we should appear before your committee on 28th. Wire me immediately my expense. Wire or write me fully apparent sentiment your committee regarding this bill.

DR. M. B. PRENTISS.

PAWHUSKA, OKLA., March 23, 1924.

Senator J. W. HARRELD,
Care United States Senate, Washington, D. C.:

Reported Senate Indian Committee will consider Snyder Osage Indian bill March 28. Citizens here vitally interested in bill. Wire if above is correct and if action by your committee will be delayed until you make investigation here. If not, if we will be granted hearing before committee prior to any action thereon.

FRANK T. MCCOY.

PONCA CITY, OKLA., March 28, 1924.

Senator HARRELD,
Washington, D. C.:

Business interests of this section are very averse to present Osage legislation. Hope you can defer action in committee until Congressional committee can come to this vicinity and thoroughly investigate conditions. Conditions among the Osages do not warrant or require any such legislation.

L. A. MARIS.

PAWHUSKA, OKLA., March 24, 1924.

Hon. J. W. HARRELD,
United States Senate, Washington, D. C.:

Howard's position in House on Osage legislation correctly reflects practically unanimous opinion Osage County people. Urge you as Oklahoma Senator and Chairman Senate Indian Committee give us full opportunity for hearing. Urge no legislation until congressional committee has fully investigated and reported. We resent charges our courts and citizenship are corrupt. County knows entire situation rests solely in your hands. House committee bill ruinous. Give us bill fair to citizens, courts, and Indians.

MARTIN CARRIKER.

TULSA, OKLA., March 27, 1924.

Hon. J. W. HARRELD,
United States Senate, Washington, D. C.:

Saw Senator Owen in Oklahoma City last night. He requested that I wire you that he as member of Indian Affairs Committee requested that hearings on Osage and Five Civilized Tribes' bills be not closed until I could appear and have hearing. The people of Oklahoma are just beginning to realize the great injustice the Indian Department is attempting to do to the State and the Indian through these bills. If your committee or the Congress will make a thorough investigation of all cases both in the courts and the Indian Department on the ground in Oklahoma, where witnesses can be heard without fear of the autocracy of the Indian Bureau, you will discover that just as much waste of the Indians' money has been brought about through acts of the department and its representatives as in the courts. Many of these people can not get to Washington to present their cases. Give them a chance by investigating in Oklahoma, where all facts on both sides will be available to the committee and the Congress.

E. B. HOWARD.

TOWN OF FAIRFAX, OKLA.,
Osage County, March 20, 1924.

Hon. J. W. HARRELD,
Senator, Washington, D. C.

DEAR SIR: I wish to take this opportunity to write you in regard to the proposed Osage legislation now pending in Congress, the Snyder bill.

Ever since your election to the United States Senate your warm friend and personal admirer, Dr. M. B. Prentiss, of this city, has talked unceasingly of your just disposition and your desire to be of real benefit to the people whom you represent, until we have all got into the way of depending upon this, and the attitude of a very great majority of the people of this county is that we can safely depend upon you to see that justice is done to us.

With the exception of a few people, mostly men connected with the agency at Pawhuska, and a few others who hope to benefit through this proposed legislation, the feeling in the county is decidedly pronounced against this bill. We think it is a vicious piece of legislation, wholly unwarranted, and we realize the fact that the committee is being loaded with evidence that does not bear out the facts or that is not a true picture of conditions here.

If there is any way you can block this legislation until the facts can be put before Congress, we shall feel deeply indebted to you, and we shall consider it an act of the greatest friendliness toward the entire county.

Senator Harreld, I want to say to you that I am a Texas Democrat; but if this bill, through your influence, can be blocked, modified, or defeated, there is nothing you could ask of me politically that would not have my whole-hearted support, and what is true of me is true of 90 per cent of the Democrats to whom I have talked. We are for any man in any party who will prove his usefulness to this community, and you may rest assured this is a statement made in all integrity and sincerity. The Democrats and Republicans are as one man against this legislation and for the man who makes himself known and felt as a friend of Osage County.

Yours very truly,

PITTS BEATY, Mayor.

MORTENSON MOTOR SALES CO.,
March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians, and, as a matter of fact, they are very much in favor of the present guardianship system.

The present system provides that an application for a court order must first be presented to the Osage Indian Agency for their approval before the county court will sign the order prayed for in the application. This is a double check system which is certainly for the best interests of the Osage, as the court and agency are naturally jealous of each other and therefore will not allow any questionable order to be signed.

As our Senator, we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska, where all records and witnesses are available, and after a thorough investigation is made, we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Yours very truly,

M. MORTENSON.

CHAMBER OF COMMERCE,
Fairfax, Okla., February 1, 1924.

Senator J. W. HARRELD and MEMBERS
OF THE OKLAHOMA DELEGATION IN CONGRESS,
Washington, D. C.

DEAR SIR: On or about the 8th day of January, 1924, the Fairfax Chamber of Commerce was invited to send a delegation to Pawhuska, Okla. to meet with various other civic organizations of Osage County, for the purported purpose of indorsing a proposition to Congress to release certain accrued Osage Indian funds to be spent under the supervision of the superintendent of the Osage Indian Agency for improving Osage County farm lands.

This indorsement is being unjustly used in support of House Resolution 5726, which resolution does not contain a single provision of the proposition as indorsed by this said meeting. We feel that if this indorsement is being used for any purpose than as intended as outlined above, our delegation in Congress should know of it.

The Fairfax Chamber of Commerce wishes to go on record as indorsing the principles contained in a petition adopted at a mass meeting of the people of Fairfax and vicinity under date of January 31, 1924. and not House Resolution 5726.

L. R. HEFLIN, *President.*

W. J. MAHAN, *Secretary.*

Attest:

THE SMITH-WILLIAMS HOTEL,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

As our Senator, we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us, and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska, where all records and witnesses are available, and after a thorough investigation is made we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indians. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Yours very truly,

R. R. SHAUB.

LAHMAN ICE Co.,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

As our Senator we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska where all records and witnesses are available and after a thorough investigation is made we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Yours very truly,

LAHMAN ICE Co.

FAIRFAX ELECTRIC CO.,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

As our Senator we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and a personal investigation be conducted in Osage County.

Very truly yours,

G. H. BARTON.

THE OSAGE BANK,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

As our Senator we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska where all records and witnesses are available and after thorough investigation is made we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Yours very truly,

OSAGE BANK.

SPURGIN MOTOR CO.,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians and as a matter of fact they are very much in favor of the present guardianship system.

The present system provides that an application for a court order must first be presented to the Osage Indian Agency for their approval before the county court will sign the order prayed for in the application. This is a double check system which is certainly for the best interests of the Osage, as the court and agency are naturally jealous of each other and therefore will not allow any questionable order to be signed.

As our Senator we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska, where all records and witnesses are available, and after a thorough investigation is made we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Very truly yours,

W. C. SPURGIN.

ROCHAU PETROLEUM CO.,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma, Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians and as a matter of fact they are very much in favor of the present guardianship system.

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Kindly give this matter your very careful attention.

Yours very truly,

A. D. ROCHAU.

LIBERTY CONFECTIONERY AND BOOK STORE,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator for Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians, and as a matter of fact they are very much in favor of the present guardianship system.

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We would suggest that this committee be headed by yourself, and make a personal investigation at Pawhuska, where all records and witnesses are available, and after a thorough investigation is made we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Yours very truly,

H. L. MAULDIN.

BIG HILL TRADING CO. (INC.),
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians and as a matter of fact they are very much in favor of the present guardianship system.

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Kindly give this matter your very careful attention.

Yours very truly,

BIG HILL TRADING CO.

QUARLES HARDWARE CO.,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma,
Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians, and as a matter of fact they are very much in favor of the present guardianship system.

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Kindly give this matter your very careful attention.

Yours very truly,

QUARLES HARDWARE CO.

GORDON GROCERY,
Fairfax, Okla., March 24, 1924.

Senator J. W. HARRELD,
United States Senator from Oklahoma, Washington, D. C.

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians and as a matter of fact they are very much in favor of the present guardianship system.

The present system provides that an application for a court order must first be presented to the Osage Indian Agency for their approval before the county court will sign the order prayed for in the application. This is a double-check system which is certainly for the best interests of the Osage as the court and agency are naturally jealous of each other, and therefore will not allow any questionable order to be signed.

As our Senator we call upon you to see that this bill does not pass and that you will use all your efforts to defeat the bill. This is very vital to us, and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska where all records and witnesses are available and after a thorough investigation is made, we are quite certain that you will see that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your careful attention.

Yours very truly,

GORDON'S GROCERY.

OSAGE COUNTY REPUBLICAN HEADQUARTERS,
Pawhuska, Okla., March 24, 1924.

Senator J. W. HARRELD,
Washington, D. C.

MY DEAR SENATOR: I see you are to have hearings on the Osage bill the last of this week, and while I am not interested in the way and to the extent some of our fellows seem to be, I feel that it is no more than right that I express my views on matters of vital importance to Osage County and the Osage Indians.

In matters of Indian legislation the interest of the Indian is really the only one to be considered, so the one thing to be determined is, what is the best interest of the Indian. The Indian Office says they should be the sole protector of the Indian and the sole judge of what is best for him, while the bar association and a majority of our citizens are of the opinion that the Indian should be as any other citizen. I believe the Indian Office and the bar association are both working from entirely selfish motives, the one no less than the other. Looking back over the record of the Indian Office and what it has really done for the Indian, I can see very little for them to be proud of compared with the opportunity they have had. In the past 10 years they have accomplished nothing in the way of helping the Osages to progress in the matter of civilization, morals, health, industry, or any of the things which are generally considered of importance in the matter of citizenship. I will admit they have accumulated vast sums of money, but they also gave away several millions of dollars in renewing leases in 1916, and again in the extension of leases in 1921, without any lawful reason whatever. The money, you must understand, is the sole subject of legislation, the only bone of contention between the Indian Office and the bar association, and neither of them care a hoot what becomes of the Indian personally, and the sooner something adverse happens to him the more money can be accumulated for the Indian Office and others to war about.

The whole thing is nauseating in the extreme, but the Indian Office is the one that is almost wholly to blame, by reason of their policy of trying to accumulate vast sums of money instead of paying the money out to the Indians as it accrues to their credit. No race of people can or will progress, and very few individuals, so long as they have a living without effort, and that applies no more to the Indian than to any other race of people. Ten years ago the quarterly payments were very small, and many of the Indians were working on their farms, actually making a good living, and making rapid progress in the matter

of real citizenship. To-day you can pick hardly one example who is worthy of mention as a successful business man or farmer, and that condition will not be materially bettered as long as these big payments keep up or as long as a "dole" system is maintained over the Indians. Under the present conditions I do not believe you can expect much progress by the present generation, but I can see no excuse for extending the same conditions over future generations without end, as the Indian Office is trying to do by its present legislative program. As a matter of fact, the only excuse for the existence of the Indian Office to-day, either locally or in Washington, is to employ a force of men and women, most of whom would have a hard time making a living if put on their own hook. I do want to say, however, that among the most efficient employees I have come in contact with the Indian Office are these of Indian blood who have to work for a living, and not the "squaw men" and some of the poor old civil-service fossils you have in the Washington and Pawhuska offices. The Indian Office has demonstrated time and again that it is incapable of handling the Osage oil business, and if it were not a fact that a vast majority of the oil men operating in the Osage are men of high moral character the Osages would have been stolen blind. The oil business of the Osages should be under the Bureau of Mines, if the United States Government is to handle it, the funds should be handled direct by the Treasury Department, and any Indians who are actually incompetent by reason of physical or mental infirmities or lack of education should have guardians accountable to the courts of this State, who can and will look after the person as well as the estate of the ward. With the vast amount of business handled by our probate court pertaining to Osage estates it is not unreasonable to assume that there has been some petty graft, but I want to say that as a whole the guardianships have been pretty satisfactory, and no bonding company has ever yet had to reimburse an estate for the defalcation of any guardian of an Osage Indian. I know there are many guardianships here which are unnecessary, as no real good is accomplished by having a guardian over a young, healthy, educated Indian, who really knows what he should do, but "just don't give a damn." That kind of a fellow doesn't need any protection either of the court or the Indian agency.

Many charges of corruption among the Indians have been made by the Indian Rights Association, but they evidently sent out as their investigators men and women who are prejudiced, incompetent, and irresponsible, as the cases I have had occasion to investigate I have found to be without any foundation of fact and malicious in the extreme. Such charges should not be considered until they have been probed to the fullest.

My sentiment is against any legislation that would give the Indian Office any additional powers, as they have all the power under existing laws that is needed to fully protect the interest of every Indian; and it has been demonstrated time and again that local matters can not be efficiently handled through any bureau located in Washington, and there is more real danger of graft and corruption through that source than through the courts of our State. Legislation such as is now asked for by the Indian Office would be temporary, as there can never be any satisfaction either to the Indians or the citizens of this county and State in bureaucratic government. I do believe, however, that some satisfactory legislation of a progressive nature can be worked out, if the Indian Office and others will consider the real "personal" welfare of the Indian and not look at the financial end of the deal alone.

A permanent law, looking to the following points, would be the salvation of the Indian of the next generation, and a starter on that road to the present generation:

Tribal relations should absolutely cease in 1946, the time now fixed by law. All persons of sound mind, having eighth-grade educations, should be given certificates of competency, and all accumulating moneys paid to them each quarter (regardless of quantum of Indian blood). Every quarter section of Indian land suitable for farming should be improved out of accumulated funds. Homesteads of persons of half or more Indian blood should be inalienable and nontaxable and not liable for debts during the life of the allottee. Suitable appropriation should be made out of tribal funds to be used for social welfare work, in addition to the proposed demonstration farm, and more stress should be laid upon the health and spiritual and moral welfare of the Indian.

The old full blood, incompetent Indian must, of course, be taken care of, but his money should be used for him and not saved for someone else (that some one most likely a worthless white man or woman). By 1946 there will not be any of this class of Indians, and no other class needs protection. They really need to be thrown upon their own resources so that they may learn to live and grow as other citizens of this country.

The one thing needful at the present time is a thorough investigation by your committee as to the real conditions in Osage County, which can only be had by open and unbiased hearings right here on the ground, rather than such prejudiced and unfair proceedings such as have been had before the House committee, 1,500 miles away from the seat of operations, where only the Indian Office and its subsidized Indians and satellites are given consideration, and the other side of the question is entirely shut out sine die. It would certainly be improvident, to say the least, to attempt to pass any legislation of the sort contemplated without this investigation by a joint committee of Congress, as provided for in your resolution; and I am quite sure that such an investigation would place the whole matter in a different light from that in which it is now viewed.

Trusting that you may be able to give this matter your earnest consideration and that I may have the pleasure of seeing you on this investigating committee, and assuring you of my hearty cooperation in the matter of getting the facts, I beg to remain,

Yours sincerely,

J. L. MILLER.

WASHINGTON, D. C., January 27, 1924.

SIR: Please refer to H. R. 5726, introduced in the House on January 18, 1924, lines 6-18 on page 3, provided as follows:

"The Secretary of Interior shall invest the remainder, after paying all of the taxes of those members whose funds are subject to his supervision, either separately or jointly, in such manner as to him shall be deemed to be for the best interest of such members, in such a way under such restrictions, rules, and regulations as he may prescribe, or place the same on time deposits in banks in Oklahoma, for the benefit of such members, under such rules and regulations as he may prescribe: *Provided*, That any adult member of the Osage Tribe not having a certificate of competency may make recommendations to the Secretary of the Interior concerning investments to be made in his behalf or in behalf of any of his minor children."

You will note that authority is given to invest either separately or jointly. This means that the combined remainder might be invested in one project, such as the purchase of the New Mexico ranch which is contemplated, or purchase of any other joint adventure.

Lines 15 to 18 on page 3 provide that any adult members may make recommendation as to the investment of their own funds and that of their minor children. This simply opens the way for persons interested to work on such Indians and to get them to recommend investment in such projects as the Bartlett Ranch in New Mexico or any other similar project.

Study these bills closely and you will be convinced, I think, that these bills vest too much authority in the department and which can very easily be abused. Nearly all Indian treaties vest the authority of their guardians in Congress and the President and not with the Indian Bureau, and I believe that all laws pertaining to Indian Affairs should be made more mandatory in their effect.

Very truly yours,

R. J. HILBERT.

OKLAHOMA CITY, OKLA., March 27, 1924.

Hon. J. W. HARRELD,

United States Senate, Washington, D. C.:

We oppose the present legislation pending before Congress affecting Osage Indians and the Five Civilized Tribes until an investigation can be made by Congress on the ground. The proposed legislation by the Interior Department is an indictment of the Oklahoma courts. We feel that the Frye bill, passed by the Oklahoma Legislature, gives ample protection to Indian estates.

J. CORBETT CORNETT,
H. B. DURANT,
HARVE LANGLEY,
WASH. E. HUDSON,
GLEN HORNER,
W. M. GULLAGER,
COURTLAND FEUQUAY,

L. L. WEST,
CHAS. E. WELLS,
E. M. FRYE,
JOHN GOLOBIE,
W. M. CLINE,
C. B. LEEDY,

Members of Oklahoma State Senate.

FAIRFAX, OKLA., March 24, 1924.

Mr. J. W. HARRELD,

United States Senator from Oklahoma, Washington, D. C.

MY DEAR SENATOR: This is not from an "old political war horse" but a political beast of burden "Republican" in form and democratic to the core in matters of common interest to the people of my home and country.

We wish here and now to tender to you and every Member of the American Congress our hearty appreciation for your services in attempting to block that nefarious piece of Indian legislation affecting the interests of all the white citizens of Osage County, as well as every member of the Osage Tribe of Indians; we want you to know, Senator, that we need help in this hour, and we must expect help from persons occupying positions like yourself.

We have been Secretary of the Interior-ized, Commissioner of Indian Affairs-ized, Osage agent-ized, Snyder-ized, and now they are attempting to superintendent-ize us with a discretionary attachment which, in our judgment, will be suicidal to every form of business in Osage County, both to the Indians and white citizens. The white citizens of Osage County are entitled to more or less consideration; they are attempting to make Osage County a fit place for people to live by investing their money toward building cities and towns, schoolhouses and churches, pavements and hard-surfaced roads, and improving the country in general, for which they are certainly entitled to some consideration.

The superintendent of the Osage Agency is using all of his efforts to enmass large fortunes for the Indians by holding their money, nobody not even the Indian himself knows where, neither will any other person know where, until the Indian dies; then trouble will commence between the heirs of the deceased.

Each Osage Indian has an individual wealth of perhaps \$75,000, an income of from \$12,000 to \$20,000 per year, and there is not an Osage Indian in the tribe that is competent or capable of managing the affairs of an estate of that magnitude.

Three years ago the Indians were all in debt in amounts ranging from \$10,000 to \$35,000. At this time all of them who have guardians are out of debt and have money invested in interest-bearing securities and on deposit in the banks. Those who are under agency supervision may be out of debt and have money, nobody knows how much or where it is; we do know that it does not go into the market of trade and business as we believe it should.

It strikes us that any man with good judgment would know that this is a white man's country and progress and civilization depends upon the white man and the white civilization; Osage County is an empire in area and the richest plot of ground on the globe so far as wealth-producing resources is concerned, and we do believe that the people who are attempting to make this county a fit place in which to live should be considered in the matter of the distribution of the wealth of this country.

There is much danger in piling up large amounts of money where Dohoney, Sinclair, Daugherty, McAdoo, Fall, and the balance of the high-ups may make a raid thereon; better far the money be placed in the hands of the common guardian under the legal supervision of the State courts supplemented by the agency supervision and not discretionary power.

With \$40,000,000 of money hoarded some place outside of the Treasury of the United States, some person or set of persons will undertake to exploit that money and the way it will get away from the Indian will be just too bad.

The 35,000 people of Osage County are entitled to have a person in the position of superintendent to whom they might go and talk business and receive advice and cooperation, and not a person whom 90 per cent of the people despise and fear.

Yours truly,

D. LAKE HUBLER.

RESOLUTION

Whereas guardians of Osage Indians have paid old indebtedness of their wards of over \$1,000,000 and accumulated assets of over \$9,000,000; and

Whereas the guardians have the right under existing law to invest their wards' funds in first-lien mortgage loans on real estate, and have heretofore invested large sums of such funds at the rate of 7 per cent interest in such securities, and the Government receives only 4 and 4½ per cent on Osage Indian money invested by it; and

Whereas no loss has been sustained by any Osage Indians under guardianship because of such real estate loans, and the interest rate obtained by guardians produces an income in excess of that produced by investments made by the Government so greatly in excess of Government investments to more than pay the expenses of guardianships; and

Whereas the time-tested and proved guardianship method of handling moneys of incompetents is the best method, and in case of Osage Indians is more beneficial alike to the Indian and to the community whose natural resources produce the wealth, and improves and benefits the Indians landed properties; and

Whereas House Resolution 5726, known as the Snyder bill, as reported out of the House Committee of Indian Affairs, is a long step backward in the way of handling Indian matters and hinders development and progress of both the Indian and his community and is unwarranted in its provisions; now therefore be it

Resolved by the Lions Club of Pawhuska Okla., in regular noon session, this 27th day of March, 1924, That we urgently protest against the passage of such proposed legislation by Congress and respectfully request that legislation be deferred until a thorough investigation has been made by a joint committee of the Senate and House, and that copies of this resolution be sent to Senators Harrel and Owen and Congressman Howard.

* Unanimously adopted this 27th day of March, 1924.

PAWHUSKA LIONS CLUB,
A. F. STEPHENSON,
Secretary

PAWHUSKA, OKLA., March 28, 1924.

HON. J. W. HARRELD,
Senate Chamber, Washington, D. C.:

Use your influence to defer action on Osage legislation until conditions are investigated.

WM. S. HAMILTON.

PAWHUSKA, OKLA., March 26, 1924.

HON. J. W. HARRELD,
United States Senate, Washington, D. C.:

By resolution to-day, request that you see that action on pending Osage bill is deferred until investigation by your committee made here.

CHAMBER OF COMMERCE,
By J. J. QUARELS, *President*.

FAIRFAX, OKLA., March 24, 1924.

Senator J. W. HARRELD,
*United States Senator from Oklahoma,
Washington, D. C.*

MY DEAR SENATOR: The pending legislation relative to the guardianship system of Osage Indians is the most vicious bill that has been presented to Congress concerning Indian matters.

The bill is not sponsored by the majority of Osage Indians, and, as a matter of fact, they are very much in favor of the present guardianship system.

The present system provides that an application for a court order must first be presented to the Osage Indian Agency for their approval before the county court will sign the order prayed for in the application. This is a double cheek system which is certainly for the best interests of the Osage, as the court and agency are naturally jealous of each other and therefore will not allow any questionable order to be signed.

As our Senator, we call upon you to see that this bill does not pass, and that you will use all your efforts to defeat the bill. This is very vital to us, and we would like to request that you send a committee from Washington to investigate this bill and to investigate all conditions before you allow the bill to be reported out of the committee.

We would suggest that this committee be headed by yourself and make a personal investigation at Pawhuska, where all records and witnesses are available and after a thorough investigation is made we are quite certain that you will see

that the bill as presented is not for the best interests of the Osage Indian. An investigation will vindicate the people of Osage County.

Kindly give this matter your very careful attention.

Yours very truly,

C. E. ASHBROOK.

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Washington, D. C.

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Very truly yours,

H. N. COOK, *President.*

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Yours very truly,

A. C. HUNSAKER.

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Kindly give this matter your very careful attention.

Yours very truly,

W. F. MAULDIN.

MEMORANDUM

Amendments suggested to H. R. 5726:

1. Strike out in line 10, page 6 (H. R. 5726), the words "not exceeding \$500 a quarter."

2. Strike out line 18, page 6 (H. R. 5726), commencing with "The Secretary of the Interior" down to and including "supervision," line 4, page 7, and insert in lieu thereof the following:

"The Secretary of the Interior shall invest the remainder after paying all the taxes of those members whose funds are subject to supervision, in such manner as to him shall be deemed to be for their best interest, in such a way and under such restrictions, rules, and regulations as he may prescribe, or place the same in time deposit in banks in Oklahoma for the benefit of such members, under such rules and regulations as he may prescribe: *Provided*, That any adult member of the Osage Tribe of Indians not having a certificate of competency may make recommendations to the Secretary of the Interior concerning investments to be made in his behalf or on behalf of any of his minor children: *Provided further*, That any part of such remainder, including minors' funds, may be expended for the benefit of such members of the tribe for specific purposes, when authorized by the Commissioner of Indian Affairs, and shall be expended under his direction and supervision."

The CHAIRMAN. Do you want Judge Humphrey to be heard at this time?

Mr. WOODWARD. I think Mr. Leahy wants to make a statement.

STATEMENT OF MR. T. J. LEAHY

Mr. LEAHY. Mr. Chairman, in view of what the chairman has desired in reference to a sort of a case being stated, before you go into the evidence—

The CHAIRMAN (interposing). I would like to have the issues clearly defined, if possible.

Mr. LEAHY. I have lived at Pawhuska for about 32 years. All of my active business life has been there. All of my experience in the practice of law has been during my residence there. I have been familiar with the members of the tribe all my life. I was born among these Osage Indians, and I believe I know something about the history of this matter and what the real conditions are. I doubt if the statements that have been made to the committee furnish a fair understanding of what the real controversy is there at this time. I want to say in addition to that that the firm of attorneys of which I am the senior member does more business both with the whites and with the Indians than any other three firms in Osage County, and I doubt if there is a firm in the State that transacts the same amount of business as the firm with which I am connected. By reason of that I think I am in a position to know something about this matter.

Under the 1906 act, which was the allotment act, all of the income of members of the tribe was to be paid to the members without any restrictions or supervision. There was no provision in that law or any other law, which permitted the courts of Oklahoma to take jurisdiction of Indian estates, and it was not until 1912, that Congress permitted the courts of Oklahoma to take jurisdiction.

Then it conferred this jurisdiction, or rather removed the obstacles to a certain amount of jurisdiction in the court. Under the 1912 act it permitted Congress to take this jurisdiction, and provision was also made which authorized the superintendent and the Secretary of the Interior to appear in the court and protect the interests of the Indian, if they saw fit, with the right of appeal. That was the basis at that time, and I do not hesitate to say, Mr. Chairman, that the reason the 1912 act was passed conferring jurisdiction upon the court was because those who were interested in the matter and urged its passage believed that the courts were in better position to correctly interpret the laws of Oklahoma and to correctly determine those laws than was the department. That was the cause of that jurisdiction being conferred.

I want to say this, that so far as the full-blood Indian is concerned, he has been all the time opposed to guardianship.

The CHAIRMAN. He wants it left like it was in 1906?

Mr. LEAHY. He wants it left like it was in 1906.

The CHAIRMAN. To have all of it paid to him, whether he is competent or incompetent?

Mr. LEAHY. Yes, sir. He does not want any guardianship. He wanted it handled by the department, so far as that is concerned, so long as he was not restricted in the use of the money.

In 1921, after an investigation on the ground, as these people have been clamoring for now, by a committee of Congress, the act that is now the act of 1921 was passed. The report of that committee and the record that they made, the testimony they took is all a matter of record and can be had. In 1921 the Congress, without any solicitation on the part of anybody, took the bit in its own teeth and placed the restrictions upon the funds of the restricted Indians that are now a matter of law.

The CHAIRMAN. Let me clear up one point. Between 1912 and 1921 the law was that all these funds should be paid to the competent Indian and all of the funds of the incompetent Indian, if he had a guardian, should be paid to the guardian?

Mr. LEAHY. Yes, sir.

The CHAIRMAN. And in 1921 they limited the amount that might be paid to the guardian?

Mr. LEAHY. No, sir.

The CHAIRMAN. I did not quite get that.

Mr. LEAHY. The only Indians who had guardians prior to 1921 were those Indians who were adjudged, because of drunkenness or because of mental unsoundness, to require a guardian, and their money was paid to the guardians. But all other Indians, whether they were what you would call incompetent or those who had received certificates of competency, received all of their money up to 1921. The committee of Congress found that the funds of the Indians that were being paid to them in the main were grossly misused; that notwithstanding the fact that they were receiving large amounts of money, Congress found that the Indians were woefully in debt. The fact that an Indian was receiving \$10,000, \$15,000, or \$20,000 a year, was no protection to him against debt, because of the conditions that existed; that is what this committee and Congress found, and due to that fact, the Congress in 1921, acting upon the report of the congressional committee, provided that those who had certificates of competency might in the future get all of their money; that those who did not have certificates of competency should only have \$1,000 a quarter out of their income, and that under supervision, which is the same as the present bill, provides for the money that is to be paid them.

After the passage of the 1921 act—there being nothing in that act restricting the payment of the entire income to the guardians—many of the full-blood Indians who did not have certificates and who were advised that if they had a guardian, the guardian would receive all of their income and therefore they would receive more of it, came in and asked for guardians, notwithstanding that Congress by the 1921 act intended to conserve the funds of the Indians against waste and extravagance; and it built up more than there was before that certain class of guardianship, and brought in there a class of people who have no other purpose than to live by reason of the income that they make off of these guardianships. It is that proposition, as I understand it, that has induced the department to ask for the restrictions that are placed in this bill.

The CHAIRMAN. To what extent are these professional guardians in control of probate matters?

Mr. LEAHY. Well, I would say the professional guardians—the class that I term “professional guardians”—I do not want to be misunderstood, because we have some very fine guardians, who are doing some very fine things for the Indians—but I would not say that the professional guardians are in the majority, but there are quite a number of them.

In the hearing before the House committee, Bacon Rind, who is perhaps the most prominent full blood amongst the Osage Indians, a man of rare intelligence, and who is what is known as a restricted Indian, testified before that committee that he was under guardianship. So far as mentality is concerned, he is as sane and can give as reasonable grounds for any position he takes as yourself or I can give, but he testified that he asked for a guardian because he was advised that if he got a guardian he would get more of his money.

The opposition of the Indians is not that they want these guardianships to remain, but the opposition of the full-blood Indian is that he wants to go back to the 1906 law, so that he will get all of his money. That is the point he makes, and he is not for the guardianship, except he figures that he will get more money if there is a guardian. That is what brought up the question with reference to these guardians.

This bill, if the committee will examine it, they will find that it contains many other provisions than the proposition of guardians. In my judgment, the question of guardianship as contained in this bill is the minor question. The more important question in this bill is the conservation of these properties and these funds for these Indians, which you will find by a careful reading. So far as I am personally concerned—and I think that in this I express the sentiment of a majority of the people there—I believe that the estates of Indians ought to be handled under the same jurisdiction and the same laws as the estates of white people, but experience has taught and demonstrated that the estates of the Indians are not protected to the same degree that the estates of white people are unless there is some other force brought in to take care of them.

So I think you will find that it is practically a unanimous sentiment among the better class of people, at least, of Osage County that if guardianships are to remain, then supervision—there ought to be a supervisory control in the hands of the Secretary of the Interior over the funds that are in the hands of the guardians, and also over investments.

I do not think there is any controversy on that question, and I am sure Mr. Humphrey, who just addressed you, will agree with me absolutely on that proposition. Though, as I say, this question of guardianship can be taken care of by supervision, it will cost the Indian more, of course, if his funds are turned over to the guardian than if it is conducted and taken care of through the Secretary of the Interior. It will cost him some more, but at the same time you might just as well say that the Government ought to supervise the affairs of your children or some other person, and not let him go into the courts, for the reason that it would be cheaper. That perhaps is, as I say, not the major question here. As I have stated to you before, the opposition of these Indians is not that they favor guardianships, because I know the Indians as well as anybody knows them, and have been among them as much as anybody has been among them, and I know that they have always taken the position that they are against the guardian; they they had rather the Interior Department would handle their affairs and pay the money to them direct, but they want the money. They say "This is my fund and my income and I want it; I am entitled to spend it, if I want to, just the same as the white man is entitled to spend his income," but the department's position is that their funds ought to be conserved and give them only enough to take care of them.

The CHAIRMAN. Then the material difference is whether the department shall have sole power of determination of what shall be paid to these incompetent Indians from time to time, or whether the department shall pay over to those who have had guardians appointed the quarterly payment in full, and leave that guardian to consult both the court and the department as to how it shall be expended. That is the material difference?

Mr. LEAHY. That is my position; that where there is a guardian and the funds are turned over to him, that he ought to be subject to both the jurisdiction of the court and the Secretary of the Interior, as to the expenditure of that fund.

The CHAIRMAN. Hasn't he got that protection under the present law, by reason of the power of the probate attorneys to appear in court and object to any investment or to any expenditure?

Mr. LEAHY. No; he has not, because an appearance or an objection is all the Secretary can do. I can do that, or you can do that, or any other citizen of the county can do that, if we want to go to the trouble. It is within the province of every citizen to go into a court where these guardianship matters are pending and make any objection that he wants to make and to be heard.

The CHAIRMAN. An individual, however, would not have the right to appeal. That is right, isn't it?

Mr. LEAHY. No; he would not have the right to appeal.

The CHAIRMAN. I want to stick to that point just a minute, because it is one of the vital points in this bill. Have you a method to suggest by which guardians who contemplate making an expenditure, either for investment or for living expenses, can have that investment supervised or approved both by the court and by the department before it is made?

Mr. LEAHY. Yes, sir. We have that to a limited extent now, Mr. Chairman. Every order of the court down there with reference to the partition of lands has no validity until approved by the Secretary of the Interior.

The CHAIRMAN. But you are now proposing to take that away by this act?

Mr. LEAHY. How is that?

The CHAIRMAN. Aren't you proposing to take that away in this act, and leave it solely to the department to determine whether the expenditure should be made?

Mr. LEAHY. No.

The CHAIRMAN. Then I fail to interpret this bill.

Mr. LEAHY. Except to this extent: It does not take away the jurisdiction of the court with reference to partition at all, but it provides for supervision by the secretary of funds and property in the hands of guardians.

The CHAIRMAN. But it gives to the department the absolute right to refuse to pay any money to the probate court at all, and thus it takes away from the court any power to pass on the advisability of an expenditure?

Mr. LEAHY. It does this: This bill provides that the Secretary of the Interior may or may not pay these funds to the guardian.

The CHAIRMAN. That is it.

Mr. LEAHY. The reason for that in the bill is, as I explained a while ago, there has been a lot of guardians appointed there that never should have been appointed. I referred to Bacon Rind, because there was no real reason for that. That has been written into this bill to correct that mistake, as I understand it.

The CHAIRMAN. Then if the department decides that it will pay to a guardian that has been duly appointed by the court any part of these funds, it likewise by that representation takes away from the court any power to supervise the expenditures, and leaves the entire question of expenditures to the department?

Mr. LEAHY. The Secretary of the Interior could refuse under this bill to pay anything to a guardian.

The CHAIRMAN. Certainly.

Mr. LEAHY. There is not any doubt about that.

The CHAIRMAN. Then it takes away entirely from the court any power to supervise the investments or expenditures, doesn't it?

Mr. LEAHY. But if it does go to the guardians, then the court has its say so on it.

The CHAIRMAN. Yes; if it goes to the guardian, the court has a right to say how it shall be expended, but even that is in a measure under the department, because the probate attorney has a right to appear and object and appeal from a decision of the probate court or any item of expenditure under the present law.

Mr. LEAHY. There is not any doubt, Mr. Chairman, about the right of appeal, and about the right of a probate attorney to appear there.

The CHAIRMAN. Then the only difference between this bill and the present law is that it absolutely gives the power to the department to determine whether or not any money shall be paid to a guardian at all, doesn't it?

Mr. LEAHY. I think perhaps it does.

The CHAIRMAN. That is the practical difference?

Mr. LEAHY. I am just referring now to the question of guardianships.

The CHAIRMAN. I mean on that feature.

Mr. LEAHY. Yes. I want to say this further, Mr. Chairman, because I think, so far as the best interests of Osage County are concerned and the people who live there are concerned, that I have about as much interest in that as anybody. The so-called financial interests of the county are not opposed to this bill in its entirety. The proposition that they oppose is the limitation of the amount of funds that are to be paid out, and the limitation as to the investments.

Under the 1921 law, as has been explained, the investments are limited to United States and county and school district bonds. That has been complained of all the time by the Indians and has been complained against in the main by the business people, because they feel that that authority of the Secretary ought to be enlarged upon, and I take the same position, that that ought to be enlarged upon.

The CHAIRMAN. Does this bill enlarge upon that?

Mr. LEAHY. To some extent. I think that the Secretary of the Interior, in investing the Indians' funds, ought to be authorized to invest them in first loans on real estate. I think that where an investment can be made for the benefit of the Indians and the Indian wants it, if he wants to buy an additional farm, let him have it. If an Indian wants to buy some cattle out of this money that has accumulated, and he has the proper supervision to see that he gets a square deal, he ought to be permitted to buy cattle.

The CHAIRMAN. That is where you and I agree, but there is no provision in this bill for that.

Mr. LEAHY. No, sir. That is the position of the citizens of Osage County, who are taking an interest in this matter.

Senator FRAZIER. You mean the bill should be amended so as to provide for that?

Mr. LEAHY. Yes, sir.

Mr. WOODWARD. We have an amendment prepared to cover that point, and we want to present it to the committee.

Mr. CHAIRMAN. I should appreciate an amendment of that kind. I want to say that I do not know whether that would apply to the Five Civilized Tribes or not, but I see no reason why this amendment could not be applied to this bill, because this is in one county of Oklahoma, and I can see no reason why that amendment should not be made to this bill. I will say that frankly. Now, go ahead.

Mr. LEAHY. The number of people who are trying to defend this class of guardians that are appointed for Indians who should not have had a guardian—there are very few in Osage County.

Senator FRAZIER. Does that hold true to any great extent, that there are guardians appointed where there is no need for them?

Mr. LEAHY. Yes; there are general complaints.

The CHAIRMAN. Doesn't that depend on whether or not you believe that it ought to be handled by the department, or whether you believe it ought to be handled by the courts? Some people believe that it ought to be handled by the one, and some believe that it ought to be handled by the other.

Mr. LEAHY. On that point, I say, Mr. Chairman, that the majority of those people who have lived there for a great many years, and have watched this condition grow up, are of the opinion, that in addition to the jurisdiction and the control that the court has over these funds and their investments and so on—there ought to be supervision by the Secretary—that actual experience and observation as to how these funds have been handled makes it a necessity that there should be this joint control.

The CHAIRMAN. I want to ask you this question. Isn't it possible for you fellows to agree on a plan of dual control of these funds?

Mr. LEAHY. On that point, Mr. Chairman, I beg to call your attention to what Mr. Humphrey said a while ago, that at the request of Mr. Snyder, the chairman of the House Indian Affairs Committee, a compromise bill was prepared. He and Judge Wilson, representing in a way the extreme opponents of the bill, and I, classed as a proponent of this legislation in a way, but occupying more or less of a middle ground, did meet together for the purpose of drafting a measure at Mr. Snyder's request, that would be considered a compromise proposition on this matter, and which would fairly and properly take care of the funds of the Osages. I have a copy of that in my pocket, and desire to make it part of my remarks here, to show just what we agreed upon.

The CHAIRMAN. I would be very glad to have you do that.

(Following is the proposed compromise bill:)

A BILL To amend the act of Congress of March 3, 1921, entitled "An act to amend section 3 of the act of Congress of June 28, 1906, entitled 'An act of Congress for the division of the lands and funds of the Osage Indians in Oklahoma,' and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe of Indians having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of oil or gas leases, the royalties therefrom, and any other moneys due such Indian received during each fiscal quarter, including all moneys received prior to the passage of this act and remain-

ing unpaid; and so long as the accumulated income, including interest on investments, is sufficient the Secretary of the Interior shall cause to be paid to the adult members of said tribe not having a certificate of competency \$1,000 quarterly, except where such adult members have legal guardians, in which case the entire income of such members shall be paid to the legal guardians; and so long as the income of minor enrolled or unenrolled members is sufficient pay for the education and maintenance of such minor, to either one of the parents or legal guardians actually having such members under twenty-one years of age personally in charge \$1,000 quarterly, out of the income of each of said minors, and in case the income of a minor is less than \$1,000 quarterly, then the entire income of such minor shall be paid to the parent for his or her maintenance and education: *Provided*, That in the case of a minor having no income, the parent or parents of such minor shall be paid out of their own income an additional \$500 per quarter for each minor child for its education and care. Rentals due such members from their lands shall be paid to them in addition to the \$1,000 quarterly allowed above.

All payments to legal guardians of Osage Indians who do not have certificates of competency or who are one-half or more Indian blood shall be expended by the guardian subject to the approval, in writing, of the proper court and the superintendent of the Osage Agency. All payments to adults not having certificates of competency who are one-half or more Indian blood, including amounts paid to parent adults for each minor, shall be expended subject to the supervision of the superintendent of the Osage Agency. The Secretary of the Interior shall invest the remainder, after paying all of the taxes of those members whose funds are subject to supervision, in such manner as to him shall be deemed to be for their best interest in such a way and under such restrictions, rules, and regulations as he may prescribe, or place the same on time deposit in banks in Oklahoma, or invest the same in first mortgage real estate liens in Oklahoma for the benefit of such members under such rules and regulations as he may prescribe: *Provided*, That any adult member of the Osage Tribe of Indians not having a certificate of competency may make recommendations to the Secretary of the Interior concerning investments to be made in his behalf or on behalf of any of his minor children: *Provided further*, That any part of such remainder, including minors' funds, may be expended for the benefit of such members of the tribe for specific purposes when authorized by the Commissioner of Indian Affairs, and shall be expended under his direction and supervision: *Provided further*, That at the beginning of each fiscal year there shall first be reserved and set aside, out of Osage tribal funds available for that purpose, a sufficient amount of money for the expenditures authorized by Congress out of Osage funds for that fiscal year: *Provided further*, That all just existing individual obligations of adult members of the tribe not having certificates of competency who are one-half or more Indian blood, and of minors, outstanding on March 31, 1921, and inclusive of that date, when approved by the superintendent of the Osage Agency, shall be paid out of the money of such individual member as the same may be placed to his credit, in addition to the quarterly allowance provided for herein.

SEC. 2. All funds and other property hereafter received by a guardian of a member of the Osage tribe of Indians, not having certificates of competency or who are of one-half or more Indian blood, which was theretofore under the supervision and control of the Secretary of the Interior or the title to which was held in trust for such Indian by the United States, shall not thereby become divested of the supervision and control of the Secretary of the Interior or the United States be relieved of its trust and such guardian shall not sell, dispose of or otherwise encumber such fund or property without the approval of the Secretary of the Interior, and in accordance with orders of the county court of Osage County, Oklahoma. In case of the termination of a guardianship of the estate of any such member, the funds and property in the possession of the guardian, subject to supervision and control of the Secretary of the Interior or to which the United States held the title in trust shall be delivered to the Secretary of the Interior to be supervised and controlled as funds and property of members who do not have certificates of competency, and who do not have guardians, are supervised and controlled.

SEC. 3. Lands devised to members of the Osage Tribe of one-half or more Indian blood or to Indians who do not have certificates of competency under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior, and the proceeds of any approved conveyance thereof shall be subject to investment by him in the same manner as is hereinbefore pro-

vided for other funds. In case there is a guardian of the estate of such member the proceeds shall be paid to the guardian subject to the provisions hereinbefore provided relating to the handling of guardianship property and funds. Moneys, including income from bonus and royalties received from oil and gas leases bequeathed to or inherited by such members of the tribe shall be paid to the administrator. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth, shall not be subject to the lien of any debt, claim, or judgment, except taxes or be subject to alienation without the approval of the Secretary of the Interior.

Sec. 4. No contract for debt hereafter made with a member of the Osage Tribe of Indians, not having a certificate of competency, shall have any validity unless approved by the Secretary of the Interior. The Secretary of the Interior is hereby authorized and directed to pay out of the funds of a member of the tribe any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts or acts of carelessness or negligence, and in case such member has a guardian, the guardian is hereby authorized and directed to pay any such claim with the approval of the proper court and the Secretary of the Interior.

Sec. 5. Whenever the Secretary of the Interior shall find that any member of the Osage Tribe, of one-half or more Indian blood, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may, after notice and hearing, revoke such certificate and thereafter the income of such member shall be subject to supervision and investment as herein provided for members not having certificates of competency, to the same extent as if a certificate of competency had never been granted such member: *Provided*, The Secretary of the Interior is hereby authorized to settle and adjust all just indebtedness of any member whose certificate of competency is revoked, existing at the time of such revocation, in addition to the quarterly payments hereinabove provided for.

Mr. LEAHY. And in that bill we do not disturb the question of the guardians, but we do provide for this supervisory control by the Secretary of the Interior over the investments. We do provide in that bill a larger general scope of the investment of these funds, so that they will come out of the list of non-taxable securities and be put in the class of taxable property. There are \$13,000,000 now on hand. Mr. Chairman, that is not paying any taxes at all.

The CHAIRMAN. What, if you can state, is the material difference between that bill which you referred to that was adopted as a sort of an agreement or compromise, and this bill that has been reported out to the House?

Mr. LEAHY. The material difference is with reference to the question of the funds which may be turned over to a guardian, and the question of the investments that may be made. In other words the bill which was drawn as a compromise by Mr. Humphrey and Judge Wilson and myself followed the main provisions of the bill in the House with the exception of providing for a more liberal disposition of money: that is, giving to the Secretary more liberal authority to give money to the Indians and invest it for them in various ways, without changing the law with reference to the guardianships, as it has been in the past, and leaving the jurisdiction of the courts as it is.

Our bill goes ahead and provides that these funds of the Indians and the inherited lands shall not lose their trust character, but be subject to the supervision and control of the Government. In other words, as we view it, it affords the opportunity to the Indian to get more of his funds in case he needs them, or in case there is the condition existing where he wants it.

For instance, we have in this room one of the Indians who signed these protests, Edgar McCarthy. Edgar opposes this restriction of his funds, and so far as he is individually concerned there is much

merit to his proposition because he has no children. He is not going to have anybody that is dependent upon him and to whom to leave his money, and therefore he thinks he should have more than \$1,000 a quarter if he wants it. He is an intelligent, educated Indian, and he believes that he can handle these affairs himself. If this restriction was enlarged upon in the present law, he could get more of his money or all of his money if the Commissioner of Indian Affairs discovered that he was capable of taking care of it, but if he found to the contrary he would have the power to curtail the amount.

The CHAIRMAN. That power ought to be somewhere; there is no question about that.

Mr. LEAHY. Yes, sir.

The CHAIRMAN. Referring back to this substitute or compromise bill—

Mr. LEAHY (interposing). You have it there?

The CHAIRMAN. Yes. You say it was drafted by a committee at the request of Chairman Snyder?

Mr. LEAHY. Yes, sir.

The CHAIRMAN. Who were those who were consulted in drafting it, who had a part in drafting this?

Mr. LEAHY. Those who took part in drafting it were Judge Wilson, Mr. Humphrey, and myself. There were no others present, but later—I was out of town at the time, but I am advised, and I think Mr. Humphrey will corroborate this—the measure was submitted to a large number of the business men of Pawhuska who are interested in this matter, and it was generally known over the county what its provisions are, and I think there is practically a unanimous support of this compromise measure in the county.

The CHAIRMAN. How did the Indians look on the terms of the measure?

Mr. LEAHY. I am told that they read it over and they thought it was better than the present proposed bill.

The CHAIRMAN. How does the department look at it?

Mr. LEAHY. I do not think the department looks with as much favor on the compromise as they do on the proposed legislation.

Mr. WOODWARD. They have not gone over it, so far as I have been advised. I have not heard them express any opinion on it.

Mr. LEAHY. But I think I can say this, that the Congressman from our district, Mr. Howard—unless he has changed his mind, I know that what I am saying is correct—was absolutely in favor of the provisions of this compromise bill.

Senator CAMERON. What do the House committee have to say about it?

Mr. LEAHY. This bill that is reported out contains a number of provisions that are in this compromise measure, but as to the questions of investment and the paying of money to guardians, they did not adopt it.

The CHAIRMAN. Have you anything else to say?

Mr. LEAHY. I want to say, Mr. Chairman, just this much more. Because some members have spoken of the meeting which was held at Tulsa a few days ago with Congressman Howard. I saw the newspaper report on that, and looked over the list of names of the people who attended that meeting. I merely want to refute the idea that it is entitled to a great deal of consideration, for this reason.

There was not a man on the list who was directly or indirectly interested in the Osage Tribe of Indians, aside from the financial gain that he gets by reason of living there and by reason of the Indians getting their funds. Some of those men are clients of mine, some of them are good friends of mine, and some of them have lived there a long time, and they are high-class persons; but their own personal financial interest is undoubtedly the thing that prompted them to do what they did do.

Since I have said that, I might also say further to the committee, because I stated a while ago I had lived among the Osage Tribe all my life except when I was in school. I have many relatives in the Osage Tribe. My own family is a member of the tribe. Therefore, I am not to be considered as one who has not a personal, direct interest in the welfare of the tribe, and who wishes to see that the best thing be done for the tribe. I lay aside any financial benefits that may come to me by reason of the extensive law practice I have and the fees which necessarily come into the office through this work. I do not believe that anyone will suffer with the more liberal provision with reference to the expenditures of moneys and the investments that could be made in the bill, and the more liberal clause with reference to guardianships. I think it would be well to write into this bill that no guardian for an Indian should be appointed except in case of unsound mind, or in the case of physical inability or drunkenness. But where there is a guardian, I think the guardian, under the supervision of the Secretary, might well have control of the Indian's funds.

The CHAIRMAN. This bill only affects the 600 incompetents. It is not of much interest to the people who have a certificate of competency, is it.

Mr. LEAHY. Those who have certificates of competency are only interested in the matter by reason of their general interest in the affairs of the tribe. They are not affected by it, so far as their own finances are concerned.

The CHAIRMAN. Now, gentlemen, these statements have been very enlightening, in my judgment, and yet we have not got very far. I make this suggestion to the committee, that we ought to continue these hearings from time to time, and to give these parties who are here a chance to testify. I have a joint request, however, from Congressman Howard and Senator Owen, that these hearings be not concluded until they shall have had a chance to be heard, and since one is a Senator from that State and the other is a Congressman from that district, I presume that we should not bring the hearings to a close until they have had a chance to be heard, but they are both in Oklahoma at the present time.

Mr. WOODWARD. The members of the Osage Tribe, including the Osage Tribal Council, which is elected by the adult members of the tribe, are opposed to the present act of 1921, which restricts their payment to \$1,000, and provides that that payment shall be made under the supervision of the department. Every year since the passage of the act of 1921 they have been in Washington trying to get that law repealed, so far as it relates to their payments. They are here again this year for that purpose. They have not been successful, however, in having Congress reconsider that act and remove the restrictions on their funds and pay it to them unrestricted, as it was under the original allotment act.

However, as representative of that tribe, I am again before this body this year asking on their behalf, and at their request, that the payment of the funds be made to them as they desire; that is, under the act of 1906. They have, however, passed resolutions before coming up here, in which they have suggested that if they can not get that, then they want some provision in the law whereby the Department of the Interior will be authorized to permit payments over and above the stipulated \$1,000 a quarter. They are not satisfied with the terms of the Snyder bill, which is now on the House Calendar, in so far as it relates to the payment of their money, but they have suggested, and I have here an amendment to that paragraph, and it might be very well to read that at this time:

1. Strike out in line 1, page 3, the words "not exceeding \$500 a quarter."

2. Strike out all of lines 9 to 20, inclusive, on page 3, and substitute in lieu thereof the following:

"The Secretary of the Interior shall invest the remainder after paying all the taxes of those members whose funds are subject to supervision, in such manner as to him shall be deemed to be for their best interest, in such a way and under such restrictions, rules, and regulations as he may prescribe, or place the same in time deposit in banks in Oklahoma for the benefit of such members, under such rules and regulations as he may prescribe: *Provided*, That any adult member of the Osage Tribe of Indians not having a certificate of competency may make recommendations to the Secretary of the Interior concerning investments to be made in his behalf or on behalf of any of his minor children: *Provided further*, That any part of such remainder, including minors' funds, may be expended for the benefit of such members of the tribe for specific purposes when authorized by the Commissioner of Indian Affairs, and shall be expended under his direction and supervision."

3. Strike out section 2, commencing line 22, page 4, and ending line 3, page 5, and substitute in lieu thereof the following:

"All funds accruing or which have accrued to the credit of the estates of deceased Osage Indians shall be paid direct to the heirs or beneficiaries of such estates in cases where such heirs or beneficiaries have certificates of competency or are less than one-half Indian blood, and in cases where said heirs or beneficiaries do not have certificates of competency or are one-half or more Indian blood then such funds shall be invested or expended for them by the Secretary of the Interior as hereinbefore provided for other funds. The Secretary of the Interior is authorized and directed to pay to the administrator or executor of such estates sufficient amounts from the funds accruing to the credit of such estates to cover the cost of administration thereof and to pay debts authorized by existing law."

That is not exactly what they desire, however. Do not misunderstand me. That is not what the tribe first requests. They want a full, unrestricted payment of their funds, but if that is not obtainable, then they consider this substitute is getting as near as possible to what they do desire.

The CHAIRMAN: We will have to close the hearing in a few minutes. Do you want to make an extended statement? If so, it would be better to wait.

Mr. WOODWARD: No; I do not think I do. I would like to know what the committee wants presented to them at this time. As it has been intimated by the chairman, the tribe will be heard, and then there will be an indefinite adjournment taken. The thing that we want, Senator, is legislation on this matter, from the Indians' standpoint especially, with regard to the disbursement of their funds. We have worked now over three years under the act of 1921, and they are becoming very impatient over not being able to get some relief. Their debts have been paid, all of them have large amounts of money to their credit, and some of them have died without getting the use of these funds, and some may die before the next session of Congress.

and we want this legislation while they are alive. I would like to know, if you care to tell me, whether or not the proposition placed before you, the so-called compromise, could have any faster action than the bill which we have had introduced, and which will probably be passed in the House.

The CHAIRMAN. Speaking for myself, I have not studied this substitute. I would want to study that very closely, and I presume the other members of the committee would. It might be very well to adjourn and let us study that between now and Monday.

Senator FRAZIER. Was this amendment put up to the House committee?

Mr. WOODWARD. Yes. Our bill, as originally introduced in the House, contained that provision, but the House committee, in its executive session, cut it out and cut us down to the form it is now. We are not at all in favor of that.

The CHAIRMAN. We will not have time to hear Judge Humphrey's testimony to-day, I feel sure.

Mr. WOODWARD. No; I am sure you will not.

The CHAIRMAN. Well, will you finish your statement, then, at the next hearing?

We will now adjourn until Tuesday morning at 10 o'clock.

(Whereupon, at 12.30 p. m., an adjournment was taken until Tuesday, April 1, 1924, at 10 o'clock a. m.)

OSAGE FUND RESTRICTIONS

TUESDAY, APRIL 1, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., Senator John W. Harreld presiding.

Present Senators Harreld (chairman), McNary, Cameron, Frazier, Ashurst, and Kendrick.

The CHAIRMAN. Reference was made the other day in the testimony to an act of the legislature of the State of Oklahoma recently passed regulating notaries' fees and guardians' fees and court fees in probate matters, known as the Frye bill. The author of it is Senator Frye, of Oklahoma, a member of the State senate, which has just closed its sessions. Senator Frye is at present chief of the Cherokee Tribe of Indians. He offered this bill and got it passed by the Legislature of Oklahoma. I have a copy of that bill this morning, and without objection I am going to have it put into the record for the consideration of the committee. Here is a printed copy, if either one of you gentlemen want to see it.

[Senate bill No. 167, approved March 21, 1921]

AN ACT Relating to the protection of estates of minors and incompetents, defining qualifications of guardians, fixing compensation of guardians, auditors' fees, and attorneys' fees to be allowed out of their estates, investment of money belonging to their estates, regulating procedure declaring an incompetent, and declaring an emergency

Be it enacted by the people of the State of Oklahoma:

SECTION 1. No persons shall be eligible to act as guardian of an estate under the jurisdiction of any county judge if said county judge is under any financial obligation whatsoever to such person, and should any county judge, while holding the office of county judge, become pecuniarily liable to any guardian of any minor or incompetent, such liability shall operate to disqualify such guardian, and it is hereby made the duty of the county judge to enter on the probate court docket the disqualifying conditions above set forth; or if such person, except parent who is guardian of his or her own child or children, has rendered financial aid to said judge, in securing his nomination in the primary election to office of county judge, or his appointment as county judge. Persons who have heretofore been appointed guardians, who are not eligible to act under this section, shall be by the county judge removed and successors appointed, as provided by law. If any person not eligible to act under this section continues to act as guardian, after such ineligibility has been legally determined, such person and the surety upon his bond shall be liable to the estate of the minor or incompetent for all money unlawfully paid by such ineligible guardian out of the estate of such minor or incompetent, and if a county judge knowingly permits an ineligible person to act, he shall be removed from office.

Sec. 2. The money belonging to estates of minors and incompetent persons, subject to the jurisdiction of the county court, can only be invested in real estate and first mortgages upon real property which do not exceed 50 per centum of

the actual value of the property, United States bonds, States bonds, and bonds of any municipal corporation and in building and loan stock of Oklahoma building and loan associations.

SEC. 3. No auditor employed to audit the accounts of a guardian shall receive a greater compensation than \$25 per day of eight hours actually and reasonably spent in the work of making the audit.

SEC. 4. Guardians appointed by the county court shall not receive a greater amount than the following compensation and no other for their services as acting as guardian in the following matter:

(A). For collecting real estate rents 10 per centum of the amount collected and accounted for. For collecting oil and gas rentals and royalties 3 per centum of the amount collected and accounted for.

(B). For collecting interest on real estate loans 10 per centum of the amount collected and accounted for.

(C). For collecting all other income 10 per centum of the amount collected and accounted for.

Provided, That no guardian shall receive as compensation for his services as such, in any one case, more than \$4,000 in any one year.

SEC. 5. The maximum which can be allowed for attorney fees out of any estate of a minor or an incompetent for anything except for services rendered in court proceedings and litigation in court shall not exceed \$50 per month, where the value of the estate does not exceed the sum of \$50,000; and not more than \$75 per month, where the value of the estate is between \$50,000 and \$75,000; and where an estate exceeds \$75,000 in value the court may allow a fee of not to exceed \$100 per month: *Provided*, That contingent fees or contract for recovery of property agreed upon and approved by courts or the ranking official representing the Secretary of the Interior in Oklahoma, who has supervision of any restricted Indian tribe in this State, do not come within the provisions of this act.

SEC. 6. Joint guardians shall not receive more compensation than a single guardian.

SEC. 7. Any person having a legal guardian, and who is about to arrive at legal age, against whom a petition has been filed, asking that he or she be declared incompetent, shall have the right to have the question of competency determined by a jury under the same procedure as now in force in civil cases in the county courts: *Provided*, That this section shall not apply to any person declared insane in the manner provided by law.

SEC. 8. It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed by the senate this the 14th day of March, 1924.

W. C. LEWIS,
Acting President of the Senate.

Passed by the House of Representatives this the 14th day of March, 1924.

J. B. HARPER,
Speaker pro tempore of the House of Representatives.

Approved by the governor this the 21st day of March, 1924.

M. E. TRAPP,
Governor of the State of Oklahoma.

Correctly enrolled.

C. B. LEEDY,
Vice Chairman Committee of Enrolled and Engrossed Bills.

Now, we are ready to proceed. Who is to be heard this morning? Mr. Woodward, did you want to complete your statement? We interrupted you.

Mr. WOODWARD. Just a few words, Mr. Chairman and gentlemen of the committee, before you take the evidence of the Indians. The purpose of this bill No. 2933 is two-fold. I think I have gone over pretty fully the desires of the members of the tribe who have not certificates of competency for more liberal payments from their income, which were very seriously restricted by the act of March 3, 1921, which, just to refresh your memories, provided that out of the

income received annually they would be allowed \$4,000 a year and the balance of the fund had to be deposited in banks on time deposit, or invested in State or Federal securities. During the time which has elapsed since the passage of the act of 1921 the average income of members of the Osage Tribe who have one share, or one headright, as it is called, has been \$10,000, and as a result \$6,000 each year, less the taxes which have to be paid, has been deposited to their credit, and \$4,000 paid to them. I think I have explained the reasons why they desire more liberal payments.

The other important feature of the bill, to their way of thinking, is the restriction of the guardianship system which has grown up largely since the act of 1921. By Act of Congress dated April 18, 1912, jurisdiction was released to the county courts of Osage County in the deceased Osage Indian estates, and in the case of orphan minors, insane or other incompetent adults, such incompetency being determined by the laws of the State of Oklahoma. There were a number of guardians appointed during that period from 1912 to 1921, but since the passage of the act of 1921 that number has greatly increased—more than doubled. That has been due to the fact principally that representations have been made to the members of the tribe not having certificates of competency that the guardians would receive the full income under the terms of the act of 1921, and then under jurisdiction of the court and through orders of the court the ward would be able to receive and expend more than \$4,000 a year, which the department is permitted to pay the Indian of that class under the act of 1921.

If there is not some change made in the present law, it will be only a question of a short time before practically every Indian of the incompetent class, will have a guardian, and the expense of administering his estate will be enormously increased.

Just a word with regard to that expense. There is appropriated at the present time \$155,000 for the administration of the Osage Indian agency, through which the entire Osage Indian business is handled. The money collected there is supervised and the money paid either to the Indians or to the guardians.

We have estimated by taking an average of the cost of guardianship cases, that the present expenses and costs and fees are approximately \$300,000.

Senator FRAZIER. Annually?

Mr. WOODWARD. Annually. These cases will average \$700 or \$800, and in addition there is about \$100,000 annually expended in the administration of dead estates, making the probable cost run at the present time to \$400,000 a year, or considerably more than double the entire amount allowed to the Osage agency for the administration of the entire tribe. On the same basis and at the same rate, it would take an appropriation of about \$2,500,000 to run the business of the Osage agency. On the other hand if this same probable business were being handled through the Osage agency at the cost at which the other agency business is handled, instead of costing \$400,000 it would cost approximately \$24,000. You can see there is a wide discrepancy in the cost of the administration through the Federal Government and the cost of the administration through the probate court.

I want to emphasize the fact that, under the law, it is the duty of the Federal Government to do this very work. I do not know of the administration of the affairs of any Indian tribe outside of the Five Civilized Tribes in Oklahoma and the Osage Indians where the Government does not do this work, and the Osage Indians are asking that they be given the same form of protection so far as finances are concerned that is given to the other tribes in Oklahoma and other States.

The CHAIRMAN. In that connection, I want to ask you this question. Guardians have the right to loan this money on real estate mortgages, which would pay 7 and 8 per cent, while the Government is loaning it for 3 and 4 per cent. Would not that almost obliterate the difference between the cost of \$20,000, which you estimate, of the Government in running the probate matters, and the \$200,000 it would require to have guardianships?

Mr. WOODWARD. It would, with one proviso, which you have overlooked, I think. If all of the money turned over to the guardian were invested in real estate mortgages at 7 per cent, which is the current rate, then undoubtedly there would be a bigger income for the Indian than if it were invested on time deposit or in Federal bonds at between 3 and 4 per cent. But here is the reason why I have to answer "no" to your question. The money paid to the guardian is not all, by any means, invested in any kind of securities, and we have here a stack of reports which you have the privilege of examining, and you will find that only a very small percentage of the money paid to guardians is in any form of interest-bearing securities. On the other hand, all of the surplus funds over \$4,000 belonging to the Indians handled through the Government is invested, and every dollar is drawing that interest. The net returns in the course of a year under the supervision of the Government, drawing $3\frac{1}{2}$ or about 4 per cent, are considerably in excess of the net amount of return secured by the guardians. They have to deduct, in the first place, a considerable amount for costs and fees and expenses, and then they allow larger amounts for living expenses, and then they carry a balance on hand in the bank which does not draw any interest. Some of these reports will show that many thousands of dollars are deposited in banks not drawing any interest at all in the hands of the guardians. It is a losing proposition from that standpoint when the money is turned over for investment to the guardian.

The CHAIRMAN. Isn't it true that a large part of the funds in the Government's hands is not drawing any interest?

Mr. WOODWARD. No, sir.

The CHAIRMAN. I am just trying to bring out the facts about it.

Mr. WOODWARD. We have approximately ten million of restricted Indian money in the Oklahoma banks, averaging about $4\frac{1}{2}$ per cent. I think it is, and we have seven and a half million in Federal bonds in the United States Treasury here, all of which is drawing interest all the time.

The CHAIRMAN. An amendment has been proposed to this bill authorizing the Government departments to loan this money on real estate mortgages at not exceeding 50 per cent of the value of the real estate on which the loans are made. I will ask you if machinery was set up under that amendment to permit loans on farm lands, if the

cost to the Government would not be about the same as the cost of guardianship, and if that is not really the main difference in the cost? The machinery that is necessary to make farm loans is very expensive.

Mr. WOODWARD. Oh, no; not at all.

The CHAIRMAN. You have to have appraisers; you have to have a great deal of machinery for the purpose.

Mr. WOODWARD. Whenever an application is filed with a guardian for a loan on a piece of real estate, the costs are borne by the applicant for the loan, and this would be a very easy matter indeed to handle by the amendment we are suggesting to the House bill as reported, to give the Government also the same privilege of making that class of loans. You will notice the amendment that was suggested here the other day gives that right to make the same class of loans which a guardian can make at the present time.

There is one other feature with regard to all of this money we are talking about, and that is this. This is not a gratuitous appropriation of Congress at all. This money used both in the administration of the Osage agency and covering the expenses of the guardians and the probate courts is Osage money. It belongs to the Osage Tribe of Indians, the only difference being that the money used through the administration at the agency is appropriated from the tribal funds, and each individual has to carry his own burden in the probate court. We contend on that account, that the Indian has a right to say how his money shall be expended, and ever since the passage of the act of 1912, which the Indians did not favor, the act which gives jurisdiction to the probate court in Oklahoma, the Indian was against it; he did not want it at all—

Senator FRAZIER. Why was it passed?

Mr. WOODWARD. I can not answer that question. I had nothing to do with it.

Senator FRAZIER. I would like to know who was back of the bill in putting it through.

Mr. WOODWARD. My recollection is that the bill was written by the local bar association and put through by the local bar association.

Senator FRAZIER. Of Oklahoma?

Mr. WOODWARD. Of Osage County. There may have been some reason for it at that time. There must have been some reason which the Congress considered good or they would not have passed that law. But the Indians are against it. They come before you now and say, "Why should we have to pay two or three times the cost of our agency administration in the court for this system of guardianship?" And it has increased. It will only be a matter of a short time when this will probably be doubled. At the last payment made this month half of the money paid to the restricted class of Indians was paid to guardians.

The CHAIRMAN. The individual Indian does not have to have a guardian under the present law unless he wants to?

Mr. WOODWARD. That is true, Senator, but you and I both have lived in Oklahoma for a good many years, and we know how easy it is to induce an Indian by representations that he is going to secure more money to change from the agency to the guardianship system, and I do not think it will be denied that these representations are being made to him. It may be in order to secure this guardianship business. It has grown into a trade. Judge Humphreys just reminds

me that there are guardians appointed right along over Indians who are objecting to it, who do not want them appointed, and they are appointed under a construction of the Oklahoma law.

The CHAIRMAN. I do not understand that there is any provision under the Oklahoma law by which a guardian can be forced upon a man.

Mr. HUMPHREYS. If he is incompetent.

The CHAIRMAN. If he is adjudged incompetent.

Mr. WOODWARD. It is not a hard matter to adjudge a full-blood, non-English-speaking Indian incompetent.

The CHAIRMAN. But he must first be adjudged incompetent by the court before he can have a guardian forced on him.

Mr. WOODWARD. There is no question about that.

Senator FRAZIER. Did I understand you to say that in the last payment half of it went to the guardians?

Mr. WOODWARD. Yes, sir.

Senator FRAZIER. You mean half of the Indians would have guardians? Is that what you mean?

Mr. WOODWARD. That might not naturally follow, because it is possible that some of these Indians who have guardians have larger estates. They might have inherited shares which would increase the amount of their payment. There are at the present time, I think, 428 guardianships at the last payment which was made in March.

The CHAIRMAN. That is about one-fifth of the tribe?

Mr. WOODWARD. There are about 1,600 left of the original tribe, and it would be about one-fourth of the remaining members of the tribe. Of course, a considerable amount—a great majority of these guardianships—are for full bloods. There are quite a number of guardians who have been appointed for those who are less than half blood.

The CHAIRMAN. The reason I mentioned that was to challenge your statement that the Indians did not want guardians. It seems to me that if they go to the court and ask for the guardians that would be the best evidence that they do want guardians.

Mr. WOODWARD. I have tried to explain that, but I will state again that the reason they come to the court in such cases, where they do ask for the appointment of a guardian, is on account of some financial gain, the promise of an automobile, a trip to some place or other, the promise of some property that they may want to buy, the promise of future larger payments to be made to them, or things of that sort, to get the Indians to consent to a guardian. We always have had, ever since the act of 1921, continual protests about this. My office is in the Osage Agency at Pawhuska, and the Indians are coming there continually protesting against the guardianship business, collectively and also individually. This has been true since I have been at the agency for 10 years.

Mr. HUMPHREY. I would like for Mr. Woodward to specify those particular guardians that have offered the Indians these inducements to have a guardian appointed.

Mr. WOODWARD. Judge Humphreys will undoubtedly give these cases to you.

Mr. HUMPHREY. And name the guardians. I would like to have that information in the record.

The CHAIRMAN. You stated that it is a rule that they are induced to have guardianship by representations.

Mr. WOODWARD. Yes. I will make that statement. They are induced by the idea that they are going to gain financially through the appointment of these guardians. I will state that and stand on it flatly.

Mr. HUMPHREY. Put their names in the record.

Mr. WOODWARD. It is a fact that the guardians do receive all of the income under the act of 1921, and it is a fact with very few exceptions they do spend more money on their wards than is permitted the administration at the agency to do under the terms of that same act.

THE CHAIRMAN. Are there any further questions?

Mr. HUMPHREY. Might I ask Mr. Woodward a question or two?

THE CHAIRMAN. Yes.

Mr. HUMPHREY. You said that the bar association in effect was responsible for the passage of the act of 1912, did you not?

Mr. WOODWARD. Yes, sir.

Mr. HUMPHREY. In giving jurisdiction to the courts?

Mr. WOODWARD. Yes, sir.

Mr. HUMPHREY. Do you know any of the facts of that case? Do you know who appeared here in behalf of the legislation, or is that merely a conclusion?

Mr. WOODWARD. No; I do not remember who appeared here. I remember meetings were held in Pawhuska when the law was drafted, but I do not remember who sponsored it in Congress.

THE CHAIRMAN. Any other questions to ask Mr. Woodward? If not, we will introduce Mr. Wright, superintendent of the Osage Agency, as the next witness. Do you care to make a statement, Mr. Wright?

Mr. WRIGHT. Yes, sir.

STATEMENT OF MR. J. GEORGE WRIGHT, SUPERINTENDENT OSAGE AGENCY

Mr. WRIGHT. Mr. Chairman and gentlemen of the committee, I am superintendent of the Osage Agency and have been in that position since January, 1915. I have been in the service for approaching 41 years. Fifteen years of that time I was among the Sioux Indians in Dakota, at Rosebud Agency. My father was agent there in 1882, and I went there in 1883 and was in charge of that agency for 7 years after serving as chief clerk there for 6 years. I was afterwards inspector for 11 years, and for 17 years past I was connected with affairs of the Five Tribes in the Indian Territory, representing the Secretary of the Interior there, and since 1915 superintendent of the Osage Agency. In view of that experience I feel that I am somewhat familiar with Indian matters, and the Osage is so different from any other reservation and their affairs handled so differently than any other reservation that they are in rather a class by themselves. In order that the committee might have a picture of the situation in connection with this very important legislation, as far as affecting the Osages is concerned, I should like to take your time to relate somewhat the history of the Osages as I understand it.

The Osages formerly lived in Kansas. They sold their lands there to the Government and received some eight or nine millions of dollars for such lands. They then purchased through the Government their

present lands in the Osage, comprising approximately 1,465,000 acres. They bought that from the Cherokees and paid them somewhere in the neighborhood of 75 cents an acre, and they held that land in common as a tribe until 1906. Prior to 1906—in 1905 there was a blanket oil lease approved by Congress made by the principal chief, covering the entire reservation for oil and gas. That lease was made for a period of 10 years, and in 1905—the first lease was made in 1896, I should say, for 10 years—when that lease expired in 1905, Congress renewed that lease covering 680,000 acres of lands where there had been development. That lease expired in March, 1916, at which time new leases covering portions of such lands were made under the supervision of Secretary Lane, and before the leases were executed, the manner of executing them with the former sublessees was thoroughly investigated, covering a period of weeks, by the Senate committee, and they approved the action of the Secretary.

The CHAIRMAN. That released about how many acres to the Indians?

Mr. WRIGHT. About 430,000 acres.

The CHAIRMAN. Leaving them about 430,000 to be leased?

Mr. WRIGHT. Yes, sir; out of the 680,000 acres formally leased. In 1906 Congress passed an act known as the Osage allotment act, which provided for the distribution of the surface of the lands among the Indians, giving each Indian approximately 650 acres, to those who were then living on the 1st of July, 1907, and enrolled. Under that plan of allotment each Indian was permitted to select 160 acres and give up what other lands he was holding. Then each Indian was permitted to make a second selection of 160 acres, and then a third selection of 160 acres, in order that one family could not retain possession of the more desirable lands. After each had made those three selections, then the balance of the land was allotted among them under the supervision of an allotment commission. Mr. Woodward was attorney for that allotment commission at that time. The mineral, including the oil and gas, was reserved to the tribe as a whole, and was not allotted to the individual Indian with the surface.

In that act of 1906 it provided that the mineral was to be owned exclusively by the tribe as a whole until 1931, and in 1931 the mineral under any of the lands was to belong to the surface owner, unless Congress otherwise directed.

Along in 1914, before the expiration of that 680,000-acre lease, the then oil operators desired to know from the Secretary of the Interior whether their leases were to expire in March, 1916, without the right of renewal, or without some arrangement whereby they could continue their operations. If the leases were to end, they did not desire to go on with any further development. The leases that were finally recommended by the council, with the approval of the department after several months' consideration, aggregated about 180,000, as I recall, and it was also provided in the resolution of the Osage Council recommending such leases be made, that Congress should be asked to extend the time of the mineral belonging to the tribe for a period of 50 years, 25 or 30 years beyond 1931, because, naturally, the leases that are made by the tribe can only be made with the approval of the department, under rules and regulations of the department, and under existing conditions all the lands could not be leased and all the oil extracted by 1931.

The act of 1906 provided that leases should be made by the tribal council, with the approval of the Secretary under such rules and regulations as he should determine, and that the royalties should be fixed by the President of the United States. That is the law to-day.

The tribal council constitutes a body of eight members with a chief and assistant chief. They are elected by their people every two years, and their duties are to make these leases. When that application for extension of the mineral period to the tribe beyond 1931 was made by the department, by the Indians, and by the oil men to Congress, that the ownership of the mineral as tribal property should continue a number of years, the House committee visited the Osage country in 1920, and as a result of their investigations this act of March 3, 1921, continuing the mineral to the tribe until 1946, and providing for a different method of paying out the moneys, was passed.

Under the act of 1906, all of the moneys that came into the agency office or that were collected for oil and gas operations were paid quarterly, and in January, 1915, a joint committee of Congress, of which Senator Robinson was chairman, with Senator Lane, of Oregon, and Senator Townsend, of Michigan, and Congressman Stevens, chairman of the House committee, Congressman Carter, and Mr. Burke, now commissioner, constituted the House committee. As I say, in January, 1915, before I became superintendent, they made an exhaustive investigation here at Washington concerning affairs of the Osages, which were reported to be in bad condition. The Osages at that time were receiving about \$385 per capita per annum, and the act of 1906 provided that the money coming into the office should be distributed quarterly to the parents, and that the minor shares should also be distributed to the parents, without restriction or supervision.

The CHAIRMAN. There were no incompetents then, and the payments were made to each and all?

Mr. WRIGHT. They all got such money unrestricted. They were also to get, and still get, during the minority of each of their children that were enrolled, the rents and use of the surface of their children's lands. The parents were to have that for the maintenance of the family, but leases of the surface of the restricted adults as well as of the minors was required to be approved by the department.

It developed at that hearing that these Indians owed a great deal of money; that there were a great many notes out against the Indians, and that some of those notes drew interest at the rate of 40 per cent per annum. That was the universal practice, and it ran from that to several thousand per cent.

The Indians, as I say, were receiving their money without restriction. The department had no authority to withhold it, as they do everywhere else, or to pay it under supervision, but the agency at that time was obliged to pay it out per capita without any supervision whatever.

In addition to the rents that they got and the royalties on their oil and gas, the money that they realized on the sale of their lands in Kansas, aggregating some eight millions of dollars, was carried on the books of the United States Treasury to the credit of each Indian. That amounted to \$3,819.76 each and it drew interest in the Treasury of the United States at 5 per cent per annum. The interest on that

money in the Treasury amounted to \$47.75 per quarter or \$191 per year, and was paid to the parents quarterly, including interests on their own shares. There was no provision made to draw out the original shares of the children, but the shares of the parents amounting to \$3,819 were permitted to be drawn out and paid to the parents at the discretion of the Secretary where they were found competent, or under supervision, and it was the practice at that time prior to 1915 for the local authorities to pay it out to the Indians to pay their debts. As a consequence, those doing business with the Indians created indebtedness, in order that the Indians could get this money to pay their debts, and notwithstanding the fact that only \$385 each was paid to them annually at that time, being the royalties from oil and gas, the attention of Senator Robinson was called to the fact, that if there was an unsatisfactory condition existing there at that time, with the small amount of money they were getting, that as the oil development increased and their revenues also increased, the deplorable condition then existing was bound to be very much greater later, and so Senator Robinson suggested, and the department recommended an amendment to be incorporated in the Indian appropriation act, which was then pending before the committee to correct conditions, but most unfortunately for all concerned, the people of Oklahoma and the Osages particularly, the bill finally did not pass. The amendment was inserted in the appropriation bill, adopted by the Senate committee, passed by the Senate and afterwards adopted in the House. That provision read as follows:

That payment of interest—

That is, interest on the trust funds—

The royalties or other trust funds belonging to and due from time to time to any incompetent individual member of the Osage Tribe of Indians may be withheld in the discretion of the Secretary of the Interior, and the funds may be used for the benefit of such Indian or his heirs, under such rules and regulations as the Secretary of the Interior may prescribe, provided that no part of such funds shall be paid out on account of any usurious obligation or contract.

As I say, although such was incorporated in the Indian appropriation act, passed by the Senate, and adopted in conference by the House, the act failed to pass that year, because of an objection by Senator Williams of Mississippi, seeking to enroll in the Five Civilized Tribes a number of Mississippi Choctaws, which he claimed should have been enrolled, and because the Senate would not adopt that he prevented the bill from passing. That is a matter of record.

Every year since that the department sought to have similar legislation put into the bill, but points of order were raised by the Congressman from the district down there, as Indians and business men wanted that money to be paid out without any restriction or supervision.

In the Five Civilized Tribes they had some tribal moneys there, realized by those tribes from the sale of their surplus lands after allotments were completed, with which I had to do. The sale of those lands amounted to some twelve or fourteen million dollars, to be distributed to members of the respective tribes, but Congress, in the various Indian appropriation bills, has not authorized such to be paid out in full, but allowed per capita payments of \$100 or \$200 per annum. The Indian appropriation act approved February 14, 1921, provided for the payment of not exceeding \$100 per capita to the

Choctaws and Chickasaws and to the enrolled members or their heirs, who by reason of the degree of blood belonged to the restricted class, the Secretary of the Interior might in his discretion withhold and use the same for the benefit of the Indians. That is the law in the Five Tribes, and it is the law generally, as I understand it, and it is extremely unfortunate that it never has been applied in the Osage; not to hold the money back, but to pay it under supervision, to see that they get the benefit of such funds.

Before the House congressional committee came to the Osage in 1920 Chairman Snyder directed me to ascertain what the Indians were doing with their money, whether they had saved any of it, whether they were in debt or not. It was not until 1916 that the oil revenues amounted to much. There were no pipe lines in the Osage in former years. The price of oil in 1915, as the chairman knows, was about 40 cents a barrel, and the department did not deem it advisable to offer much land for oil leases at that time. As I have said, the department had supervision of the oil and gas leasing and of the operations. The Indian could not lease it. The Indian could not get the oil out, and therefore if they did not get the oil out by 1931 they would lose it as a tribe. In 1915 and 1916 and prior years the revenues, therefore, were exceedingly small. For the year ending June 31, 1916, the time they sought to get the extension of the trust period beyond 1931, it was \$384.93.

The CHAIRMAN. That is per capita?

Mr. WRIGHT. Yes, sir; per capita per annum. For the year ending June 30, 1916, it was \$384.94, and the total amount paid out on that basis was \$858,000. In 1907, when they were enrolled, there were 2,229 members of the tribe, and each Indian received his proportionate share of the land, and every payment that we made then, and make now quarterly, we divide into 2,229 parts, and those who have died, their shares go to their heirs as determined by the courts of Oklahoma. Consequently several enrolled members receive several shares through inheritance, in addition to their own shares. Others who are not on the rolls, who have been born since 1907, do not participate except through inheritance. Many of the minors that have been born since, and a number of white people who have married into the tribe, have inherited portions of the shares of those who have died.

In 1916, which was the first fiscal year that we sold leases, since I have been there, and I want to say that all leases that we have made, except those that I have mentioned, the 1916 leases out of the 608,000-acre lease, have always been made at public auction, and under the law of 1921, reserving the mineral to the tribe until 1946. Provision was made that we should offer all of the lands for oil by 1931 at the rate of not less than one-tenth per year. Therefore, we have been and are obliged to offer 100,000 acres for oil leases per year, because there was approximately 1,000,000 acres unleased in 1921. We just completed a sale on the 18th and 19th of March of 51,142 acres in 160-acre tracts for an aggregate bonus of \$14,193,800. There were six quarter sections that sold for over \$1,500,000 each, the highest bringing \$1,990,000. The Osages also get a sixth royalty, and if the wells average 100 barrels a day for 30 days on a quarter section they get a fifth.

In view of the fact that this mineral is reserved to the tribe as a whole, the department has approved leases for all of the lands sepa-

rately for gas, which can not be so leased anywhere else, because in other reservations or other commercial leases each owner of the surface owns the mineral, while with the Osage the tribe owns it as a whole. Consequently, we can conserve the gas, and all of the Osage lands are leased for gas, on which the tribe gets a royalty of 3 cents per 1,000 cubic foot, while the royalties in commercial leases elsewhere run from \$100 to \$350 per well per annum. Under the old leases prior to 1916 the Osages got \$100 per annum per gas well, and such royalties amounted to about \$12,000 per annum. The royalties under the present system for gas alone aggregate about \$900,000 a year. The chairman may be interested to know that in 1918 the Bureau of Mines made an investigation to determine the conservation of natural gas, and found that of all the gas marketed in the States of Oklahoma, Kansas, and Missouri 51.4 per cent came from the Osages, and that the life of the gas wells in the Osage was from three to four years, against 14 months elsewhere in the United States. We do not permit any gas to escape, and just two weeks ago we fined a man \$2,000 for permitting gas to blow in the air.

I would like to show the enormous business there and how the tribe is vitally interested in moneys arising from their oil and gas. In 1917 the per capita payment was \$2.719; the aggregate amount paid was \$6,062,790.

For the year ended June 30, 1918, the per capita payment was \$3.672, and it required an aggregate amount of \$8,185,623.

For June 30, 1919, it was \$3,930 per capita, and took an aggregate amount of \$8,759,790.

For the year ended June 30, 1920, it was \$8,090 per capita, and the amount required to make the distribution was \$18,032,610.

For the year ended June 30, 1921, the per capita payment was \$8,600, and it took \$19,169,400 to make the distribution.

In 1922, it was \$7,700 per capita, and it took \$17,163,300 to make the distribution; the unrestricted Indian receiving his share in full, the restricted adult being paid \$1,000 quarterly and \$500 quarterly from minors' funds, and the balance placed to the credit of their accounts.

During the past year, the fiscal year ended June 30, 1923, it was \$12,400 per capita, and it took \$27,639,600 to make the distribution in the same manner as in 1922.

So, during those years, we have paid out or placed to the credit of the Indians \$105,871,000. When the House committee came down there in 1920 it was demonstrated that, notwithstanding the large sum of money that had been paid to that time, especially to restricted Indians, without supervision they were enormously in debt. I furnished that committee, procured from the banks throughout the country, statements of what the Indians had on deposit, and many samples of debts that they had incurred. The act that was passed March 3, 1921, provided, without any suggestions from the department at all, that the restricted Indians should receive quarterly \$1,000, \$4,000 annually, of the amount due them, and he should also receive \$500 a quarter of his children's money, or \$2,000 a year, all under supervision, and the balance of their money was to be placed to their credit.

Such act also directed that the just debts of those restricted Indians outstanding on the 3d of March, 1921, should be paid when

approved by the superintendent. Notwithstanding the enormous amount of money that had been paid out in former years, on the 3d of March it was found that such outstanding debts applied to 278 restricted, adult Indians. Those Indians had been paid since 1915, \$10,730,361, and they owed \$1,396,543 in addition, and of those debts it was incumbent upon us to determine what was just and what was unjust, and in the settlement we deducted about \$172,702. We made a most thorough examination, had a man from the Federal Trade Commission, and a man from the department, and made an investigation as to whether the items charged for were actually delivered to the Indians. We could not enter into the proposition of whether they should have made the purchase, but we investigated as to whether they did get the goods and at a fair price.

During the calendar year 1919 the Indians got \$5,000 each from oil and gas revenues; during 1920, oil went up and they got \$10,000 each, paid to them without any supervision.

There are probably 40,000 people in Osage County. Naturally they are there for the opportunities that present themselves. They are there to make money. It is no discredit to them at all, but they are taking advantage of these opportunities and they want this money paid out.

Senator FRAZIER. If they take advantage of the Indians, I think that would be a discredit to them.

Mr. WRIGHT. The Indians naturally want their money and after they got a per capita payment of \$10,000 in 1920, it was a pretty hard jolt for them to come down to \$4,000 per annum, in addition to which they get rents from the surface of their lands and from their children's lands, about 650 acres. Such rents aggregate around \$500 or \$600 a year for each individual, which they get without any supervision or restriction.

The expenses of administration of the affairs of the Osages has always been paid from their tribal funds. Congress does not appropriate a dollar. Out of their tribal funds every year, Congress authorizes a specific amount for administration purposes in the conduct of their affairs. This last year it was \$150,000 for the agency office, and for expenses in connection with oil and gas leases and supervision of operations.

The CHAIRMAN. You leave the impression there that all of these 40,000 people in that county take advantage of the Indians. You don't mean to say that all of them take advantage of the Indians, do you?

Mr. WRIGHT. No; I would not say that, but I do say that all of them are there in their course of business for the opportunities that are presented. They do not all deal with the Indians, though many of them rent land from the Indians.

The CHAIRMAN. What percentage of the population do you think would take advantage of the Indians?

Mr. WRIGHT. I would not care to make a venture on that. I have rarely seen a white man anywhere but what in dealing with the Indians he will do as he would deal with his white neighbors, get the best of the deal if he could, as in a horse trade. That is no disparagement at all, and I do not mean to indicate that.

These Indians now want all of their money. The administration of their affairs has always been paid out of the tribal moneys. They

are objecting when Congress authorizes certain amounts of their tribal funds for the conduct of their affairs, by the Government, that they should be asked to pay the guardians' fees to a lot of guardians. In our quarterly December payments there were about 800 restricted Indians. Between 360 and 400 of those were paid to guardians. During the last year we paid a little over \$3,000,000 to guardians, and about \$1,400,000 to administrators. Under the Act of March 3, 1921, we are compelled to pay all of the money of the restricted adult Indians to the guardians. We can only pay the Indian direct \$4,000 annually. Naturally, if the Indian can have the guardian get all of his money, and distribute that or handle it under the State laws, while he can only get direct from the Government \$4,000 per annum, he is going to ask for a guardian to be appointed, and it does not inspire him with very much confidence in his Government where the Government in managing his own affairs, and handling his matters for him, will only allow him \$4,000 but by the appointment of a guardian where he can get more money, and be required to pay for the guardian and attorneys' fees and the court costs, which average in the neighborhood of \$600 or \$700 per annum. I think a year ago about \$300,000 was paid by the Indians in court costs. That cost these Indians that much money to administer their affairs, in addition to the amount authorized by Congress from their tribal funds, for the administration of their affairs by the Department.

The receipts of the Osage Agency this past year were a little over \$60,000,000 from all sources, and the expense of handling that money disbursing it, putting it in banks, and the administration of all of the affairs of the Indian cost the Indians out of their funds about one-fourth of 1 per cent of the amount handled. The Indians do not feel when their affairs are being handled by the Government that they should be required to pay additional court costs to guardians from the tribal funds. If guardians are to receive the Indians' money to be spent under the supervision of the Government, they are acting as Government agents, and that makes that much more cost to the Indian.

We have at the present time about \$14,000,000 withheld from Indians, which is in excess of their \$4,000 per annum. Last year those who have received certificates of competency received \$12,400 from oil and gas revenue. The restricted Indian got \$4,000, therefore \$8,400 went to the credit of his account on the books of the office, as did all moneys he may have inherited. He does not get, under the act of 1921, any of the money he inherits.

I might cite one instance to show what in some measure ought to be changed. In the case of a full-blood Indian, a member of the council, and his wife, they had three children who died. They were the sole heirs, and they had no other children, so that the two parents in that case, the father and the mother, received five shares. In 1919 they got all of that money, \$25,000. In 1920 oil went up, and they got \$10,000 a share. They got \$50,000. Unfortunately, on March 3, two months afterwards, that money was gone, and they owed \$14,000. Since that time he has only been able to get \$4,000 of his own money and his wife \$4,000 of her money. They could not get any of this money they had inherited from their children, and he has been here repeatedly for the last two years seeking to get some legislation whereby they can get more money. Just in the

last few days he passed away. They have about \$80,000 in the office accumulated, and his wife will no doubt be declared the sole heir and get all of that.

The Indians are not satisfied with this proposed legislation. They want all their money. If they can not get it all, they want to get as much as they can, and the bill that the Indians submitted and which they got up in council with Mr. Woodward, and which the department recommended to Congress, was that in addition to this \$1,000 quarterly they might get certain amounts for such specific purposes as the Commissioner of Indian Affairs deemed wise or approved, to be spent under his direction and supervision. It has been the view of the committee in the House, however, that this money for these restricted Indians should be conserved and not all paid out, because undoubtedly in a few years this oil development will have gone. The oil will be taken, and they won't get the income that they are getting now, and if the money is all distributed the committee feels that they might be in an unfortunate situation.

Now, that is the condition existing in the Osage. We have this money that we conserve in about 300 banks in Oklahoma. We have \$10,000,000 now in banks, on which they pay an average of 4 or 4½ per cent. No banks pay less than 4 per cent. They all give surety bonds, but owing to existing conditions last year many State banks have not been able to get surety bonds, and therefore the commissioner has deemed it wise to invest that money in Liberty bonds. The commissioner had so invested last year about seven and one-half millions of dollars. These moneys in the banks and bonds will be kept until it is necessary to pay it out. The money is coming in at the present time from the oil development—the oil production at the present time is about 100,000 barrels a day or a little better—and the royalties amount to about \$800,000 a month, and if at any time it should not be sufficient in the future to pay the \$1,000 quarterly, to restricted Indians, then we would draw on these accumulated moneys to make it up.

Just a moment about these guardians. The act of Congress of 1912 gave the State courts jurisdiction in probate matters, with a proviso that the secretary or his representative could make investigation of the expenditures by guardians, and to take such action, civil or criminal, as might be necessary to protect the Indian. But the State laws permit larger expenditures for a ward through a guardian than the Government allows that ward, and does not conserve the funds as Congress provided they should be conserved. The act of 1921 provided that any moneys paid to a restricted Indian or paid to his guardian should be paid under supervision of the superintendent. The courts have held that that word "supervision" means that we should pay it to the proper person, and that evidently Congress contemplated that we should see that the money was paid to the proper guardian. We are obliged to see that we pay the proper person, on every dollar that we pay out, whether it is restricted or unrestricted, but the courts have held that after the money reaches the guardian, the Government has lost jurisdiction of that money, except that we can go into court and see that that money has been properly spent under the State law, not under the Federal law—and the State laws are so broad that we can not conserve the money of the restricted Indian.

There is no spendthrift law in Oklahoma. The courts there have repeatedly so held, and when we were paying out money to an Indian unrestricted before the restriction act of March 3, 1921 was passed, and it was a notorious fact that he was in debt and squandering his money, we asked for guardians to be appointed, but the court declined to appoint guardians notwithstanding he was dissipating his estate, maintaining that under the State law there was no reason for such action and no check on his expenditures.

Therefore, we can not accomplish what Congress contemplated evidently for the restricted Indians, because when we pay such an Indian \$4,000, per annum at the present time, there is nothing in the law to prevent him from going in debt beyond such allowance. We pay this \$4,000 annually in quarterly payments of \$1,000 under supervision, but we have no control over that Indian incurring additional debts. Inasmuch as prior to the Act of March 3, 1921 they were getting all of their money, about \$8,000 annually and when they were allowed to get only \$1,000 a quarter, they endeavored to live in the same way they had been living, and as a result they owe now, or did up to a short time ago, over \$280,000, these restricted Indians, beyond their \$1,000 quarterly, and we can not prohibit him doing so. This proposed act now pending does provide that no indebtedness of a restricted Indian shall have any validity unless approved by the Secretary of the Interior. That is what it ought to be, just the same as the ward of a guardian who can not go into debt without the consent of the guardian, but there never has been any law in the Osages that no restricted Indian can go into debt without the consent of his guardian, namely the Government, and consequently, we can not prevent it.

It is always a popular cry, and it puts the department in an embarrassing position, that the department is supposed under acts of Congress to protect the restricted Indian, and with all due respect to the courts and everybody else, I want to say from my 40 years' experience, God help the Indian whenever that care of the Government and Congress is withdrawn from the restricted full-blood Indian.

It is no discredit on the people that deal with them, but people dealing with the Indians are not dealing with them for the good of the Indians; they are dealing for their own good. That has been the history of legislation all over. I have spent all the years of my life, since 23 years old, with the Indian. I am a pro-Indian man, and while I am not a sentimentalist, I do believe that it is due to the full-blood Indians of this country, whether it is an Osage or any other Indian, that the Congress of the United States and the Government should protect them against others; and I believe, whether they give them a certificate of competency on patent in fee that those Indians who are now wards of the Government ought to be protected in their little homes forever and their children after them, because when they get their money or get their lands free they sell them, and they don't realize what will happen later and will have no home afterwards for their children. Their surplus lands which they do not need should be sold under the supervision of the Government to see that they get a fair price, and so much of that money that is necessary used to build up their little homes of 160 acres in most instances, for them and for their children for an indefinite time.

The people of the country, I think, indorse that. The people of the country generally do not want to see advantage taken of the full-blooded Indian. As I say, the Government department is always criticized, and always will be, for what happens to the restricted Indian. I want to say to this committee that we can not protect these Indians under the present system, and so far as the guardians are concerned, with all due respect to them, the Indians do not feel that when their tribal moneys are being used in such amount as Congress and the department deem proper and necessary to handle their affairs that after having that money taken out of their tribal funds for the department to use for that purpose that we should take and hand the money all over to the guardians and allow 300 or 400 guardians to serve as additional employees, you might say, at enormous expense, which the Indians have got to pay.

I thank you, and unless there are some questions I have nothing further to submit.

The CHAIRMAN. No, sir. What other witness do you want to call at this time, Mr. Woodward?

Mr. WOODWARD. The chief wants to address the committee.

STATEMENT OF CHIEF PAUL RED EAGLE

The CHAIRMAN. This is Chief Paul Red Eagle, present chief of the Osage Tribe, and as such president of the council. Is that right?

Mr. WOODWARD. Yes, sir.

The CHAIRMAN. Tell him to make any statement he wants regarding this legislation that is pending in the House and in the Senate.

Chief RED EAGLE (through interpreter). Mr. Chairman and members of the Senate committee, I appear before you to-day on behalf of the Osage Tribe of Indians. I have my members of the council with me. We have our desires in regard to the bill that is on the table now, but what the Osages want is not carried out in the bill, and I appear before you to-day to present to you the wishes of our tribe. There are two sections of the bill that we object to.

The CHAIRMAN. Can you point them out?

Chief RED EAGLE. We have an amendment to sections 1 and 2.

The CHAIRMAN. I will read this:

1. Strike out in line 1, page 3, the words "not exceeding \$500 a quarter."

2. Strike all of lines 9 to 20, inclusive, on page 3 and substitute in lieu thereof the following:

"The Secretary of the Interior shall invest the remainder after paying all the taxes of those members whose funds are subject to supervision, in such manner as to him shall be deemed to be for their best interest, in such a way and under such restrictions, rules, and regulations as he may prescribe, or place the same in time deposit in banks in Oklahoma for the benefit of such members, under such rules and regulations as he may prescribe: *Provided*, That any adult member of the Osage Tribe of Indians not having a certificate of competency may make recommendations to the Secretary of the Interior concerning investments to be made in his behalf or on behalf of any of his minor children: *Provided further*, That any part of such remainder, including minors' funds, may be expended for the benefit of such members of the tribe for specific purposes, when authorized by the Commissioner of Indian Affairs, and shall be expended under his direction and supervision."

3. Strike out section 2, commencing line 22, page 4, and ending line 3, page 5, and substitute in lieu thereof the following:

"All funds accruing or which has accrued to the credit of the estates of deceased Osage Indians shall be paid direct to the heirs or beneficiaries of such estates

in cases where such heirs or beneficiaries have certificates of competency or are less than one-half Indian blood, and in cases where said heirs or beneficiaries do not have certificates of competency, or are one-half or more Indian blood, then such funds shall be invested or expended for them by the Secretary of the Interior as hereinbefore provided for other funds. The Secretary of the Interior is authorized and directed to pay to the administrator or executor of such estates sufficient amounts from the funds accruing to the credit of such estates to cover the cost of administration thereof, and to pay debts authorized by existing law."

Chief RED EAGLE. Mr. Chairman and gentlemen, I present to you our wishes for our tribe. The tribe wants such a bill, which we have been trying to obtain for two years, I have been here before this committee for two years, and in the other parts of the bill the Osages stand with the Indian Bureau and have been cooperating with them, and they are now coming here to get what the Osages desire. That is what I want to say. I want to have what I have printed, Mr. Chairman, carried out, and I want Mr. Woodward to make some more statements, who is our attorney, and I depend upon Mr. Woodward. I have been talking with him for some time, and have expressed the wishes of the Osages.

The CHAIRMAN. Does anybody want to ask Chief Red Eagle any questions? If not, we will hear former Chief Bacon Rind.

STATEMENT OF MR. BACON RIND, FORMER CHIEF OF THE OSAGES, AND AT PRESENT A MEMBER OF THE OSAGE COUNCIL

Mr. BACON RIND (through interpreter). Mr. Chairman, and members of the Senate committee, I will make a statement, but I want to make it very brief. I will state that I have appeared before the Senate and the House committees several times in the last two or three years in trying to obtain for my people their needs and asking your aid and asking the aid of the Indian Department.

I suppose the members of the committee here and the members of the Indian Bureau who are here must know what the Osages' wishes are to-day. While I am incompetent—by that I mean I do not speak English and do not know the law—yet the desires of the Osages have been presented so many times here that we think the committee and the Indian Bureau must understand fully the wishes of the tribe.

Since the Osage money has been restricted, the Osage members of the council have been asking you to modify that bill. The reason the chief of the council is asking for modification of the bill before the committee is that we want the parties who are in authority to consider these aged people of the Osages, the old men, the men past 60 and 70 years old, and the women of the same age. They need their money. They need their funds more than the younger Osages. What we want is allow more funds for those old members, so that they may be benefited by their money, and to make a law for the younger members of the tribe and make it so it would be a benefit to them. If the money is restricted, restrict it so that they may get it when they desire.

The CHAIRMAN. He particularly wants more liberal payments to the older members of the tribe. Is that his idea?

Mr. BACON RIND. Yes, sir. Now, I would like to dwell on the matter of guardianship. Mr. Chairman and members of the committee, I appeared before you here many times on the matter of

guardianship. We have told you what those people are doing asking your aid, but I am at the point now, that I think the committee here is in sympathy with the guardians who have the affairs of the Indians in their hands. We have for three years tried to carry this legislation through, the wishes of our tribe, but we have failed. For what reason? The reason is that these people who represent us, people who approach you here representing the guardians, talk to you against the bill. If we shall fail again to get any legislation that will liberate the Osage affairs it will be because of the representations of those guardians. Any delay here at this time I know would mean two or three years more. What the Osages want to do is to have a voice of their own. They have nothing to say; they have nothing to suggest here if this bill is not carried through. There are two bills here, a compromise bill and then there is the House bill. The first bill, the House bill, restricted the Osage fund very considerably, allowing the Osages to spend \$10,000 to improve his house. I do not agree about those things, and the other bill, the compromise bill, does not suit me. I myself fail to see what that \$10,000 would do for the tribe. If I want to improve my place it would take more than \$10,000 for improvements.

The CHAIRMAN. We will have to suspend here until 2.30 this afternoon.

(Whereupon at 12 o'clock noon a recess was taken until 2.30 p. m.)

AFTER RECESS

The hearing was resumed at 2.30 p. m.

STATEMENT OF MR. BACON RIND—Continued

Mr. BACON RIND. Mr. Chairman and members of the committee, I made a brief statement this morning. I have dwelt on the matter of the guardian. As a piece of legislation that is wanted by the Indians of the Osage Tribe, I regret to say there are some of our own members who are opposing the wishes of the majority of the people of the Osage Tribe. That is all I want to say with regard to those people who are opposing us.

This morning the chief presented you a couple of writings or suggestions by the council. The council wishes those amendments to be put in those paragraphs. I want to express myself. I want to express that we would like to ask the support of the Senate committee on those amendments which have been presented to you, and further I would like the chairman to hear two of our mixed-blood members of the council express themselves before the committee.

The CHAIRMAN. All right. Now, Mr. Woodward, who else do you want?

Mr. WOODWARD. I think Mr. Alberty wants to make a statement.

STATEMENT OF MR. GEORGE L. ALBERTY

Mr. ALBERTY. Mr. Chairman, I do not think there is anything necessary, so far as this legislation is concerned, that I can say that has not been covered pretty thoroughly by Mr. Wright and the attorney for the council, but I will say this, that I heartily approve of the amendments that the chief offered there this morning.

The CHAIRMAN. You are a member of the council?

Mr. ALBERTY. Yes, sir.

The CHAIRMAN. Very well. Who else, Mr. Woodward?

Mr. WOODWARD. I call upon Mr. Revard.

STATEMENT OF MR. FRANCIS REVARD

The CHAIRMAN. Are you a member of the council at this time?

Mr. REVARD. Yes, sir. In regard to this bill for the Osage, I think there ought to be a change made for the welfare of the tribe in the handling of the money, etc.

The CHAIRMAN. What particular change do you suggest, now?

Mr. REVARD. Well, of course, I am not well enough posted to say just what should be changed. I would like to leave that up to the committee.

The CHAIRMAN. You mean that you think that the act of 1921 ought to be changed?

Mr. REVARD. Yes.

The CHAIRMAN. Do you think that the changes proposed in the act of 1921, as included in this bill that has been reported favorably by the House, fully covers the question?

Mr. REVARD. Well, I think so; yes.

The CHAIRMAN. Are there any suggestions you want to make concerning that particular bill that has been reported out in the House?

Mr. REVARD. Only a few changes that have been suggested to you.

The CHAIRMAN. You mean those suggested this morning?

Mr. REVARD. Yes.

The CHAIRMAN. You favor those changes in the bill?

Mr. REVARD. Yes. That is all I care to say.

The CHAIRMAN. Who else?

Mr. WOODWARD. The Assistant Chief Mekahwahtiankah wishes to say a few words.

STATEMENT OF ASSISTANT CHIEF MEKAHWAHTIANKAH

Chief MEKAHWAHTIANKAH. Mr. Chairman, I wish to make a very brief statement. The council has prepared two amendments to the bill which is before you to-day. I am not educated, so that the members of the tribe have appointed a committee of three to draft up the amendments which are suggested. I want to impress the Chair with these amendments suggested by the chief, that they are in full accord with the views of the members of the council.

I realize the voice that we have in our own affairs, but we are incompetent in carrying out these things, so the responsibility is upon the committee to make the law for us. For three years the council has

been trying to get a change in the law of March 3, 1921. Now, we are asking the chairman and the committee to help us obtain for our tribe relief on the matter pertaining to the money. We have rights, but we are not accorded our rights. We are not using our rights like the citizens of the United States are using their rights. We do not like to be ruled by other people, and yet the majority of our people have guardians and those guardians are handling the affairs of these people, and I am opposed to such things as exist among the people.

Now, I ask the chairman and the committee to consider the older members of the tribe who are of the age where they need this money the worst, so that they can enjoy the benefits of what is theirs.

The CHAIRMAN. Ask him if he means by that that he thinks all the money ought to be paid over to the Indians regardless of whether they are competent or incompetent?

Chief MEKAHWAHTIANKAH. No, sir; I do not mean that. We have presented you amendments wherein the Secretary is authorized to look after our affairs.

The CHAIRMAN. I understand, then, he wants the Secretary's office to look after his affairs rather than the guardians?

Chief MEKAHWAHTIANKAH. Yes, sir. It has been the request of our people that the Secretary will be empowered to regulate our affairs. That is all I desire to state.

The CHAIRMAN. Any other witness?

Mr. WOODWARD. That is all of the members of the council, I understand.

The CHAIRMAN. Have you any other witness you want to introduce at this time?

Mr. WOODWARD. Judge Humphreys, the probate attorney.

Mr. HUMPHREY. I think Edgar McCarthy, another full blood, wants to be heard.

The CHAIRMAN. Yes.

STATEMENT OF MR. EDGAR McCARTHY

The CHAIRMAN. Are you a member of the council or not?

Mr. McCARTHY. No, sir.

The CHAIRMAN. Have you ever been?

Mr. McCARTHY. Yes, sir; I was.

The CHAIRMAN. You used to be?

Mr. McCARTHY. Yes, sir. Here is a petition that I spoke to you about, and I have had this copy made for you.

The CHAIRMAN. I will introduce this in the record as requested, and I will read it to the committee. This petition is addressed to me as chairman of the committee and reads:

Hon. J. W. HARRELD,

*Chairman Senate Committee of Indian Affairs,
Washington, D. C.*

DEAR SIR: We, the undersigned full-blood adult members of the Osage Indian tribe, hereby request the Senate committee to consider our wishes in the Senate hearings now being held. We request our Osage affairs to be thoroughly investigated before any legislation is passed. We also wish to state that we are not in favor of House bill 5726 becoming a law. We wish to say that our chief and some members of the council are not representing the wishes of the Osages,

but are carrying out the wishes of the Indian Bureau. We insist that we be given a fair hearing and an opportunity to present our wishes to the committee.

Respectfully,

Hompatakoh (her thumb mark), Mary Pitts, Mary Loyan, Grace Morrell, Nellie Morrell, Mary Morrell, Ho-ki-ah-se (his thumb mark), Louise Ho-ki-ah-se, Eva Bean, Francis Ki-he-kah-nah-ah (her thumb mark), Wiley Whitewing, Mayella Whitehorn, Mamie Smith (her thumb mark), Kate Barker, Nettie McCarthy, Me-to-op-pe (her thumb mark), Dora Penn, Margaret Shunkahmolah, Sam Barker, Robt. Morrell, Joe Shunkahmolah, Rosa Maker Jno. Star, Simon Henderson, Moh-kah-sappy (his thumb mark), Claude Smith, Dan G. Wert (his thumb mark), Little Star, Hall Goode, Joseph Mason, Tom Big Chief (his thumb mark), Walter Martin, Nah-sa-tah-she (his thumb mark), Herman McCarthy, Wewalla (his thumb mark), Helen Pratt Martin, Kah-he-ka-nak-she (his thumb mark), Angelo Russell, Mary Lohoma, Joseph Bird, John Oberly, Henry Lohab, Josephine Lohab, Pearl Buffalo, Eugene-kah-shinka (his thumb mark), Hun-pah-ta-kah (her thumb mark), Mary Red Eagle.

This is signed by quite a number. Is this a copy?

Mr. McCARTHY. This is a copy.

The CHAIRMAN. I will introduce the original for the files. Go ahead.

Mr. McCARTHY. My name is Edgar McCarthy. Now, Mr. Chairman and gentlemen of the committee, I want to say a few words in regard to this legislation. I can not speak very good English, but I will try to do all I can, so that you can understand me. I am opposed to this legislation, for this reason. Our former chiefs were willing to have the law of 1906 amended, when they did not know what the new law was.

The CHAIRMAN. Who was your chief then?

Mr. McCARTHY. There were several chiefs, James Bigheart, Peter Bigheart, Black Dog, Nekahwahshetunkah, and several other members since this act of 1906. At the time of this act, we were attending to our own affairs, and that means the money and the land. There are certain things in that law for the Osage Tribe of Indians, divide up the land and the money equally, men, women, and children.

The CHAIRMAN. That is the act that authorized all the money to be paid to the Indians as fast as it was due.

Mr. McCARTHY. Yes.

The CHAIRMAN. Without regard to incompetency.

Mr. McCARTHY. Yes, sir. In that act they had certain persons who were under guardians, and we have certain persons to get restrictions removed by the Commissioner of Indian Affairs, and the Secretary of the Interior. In following this act for some years since that, it was changed two different times. This 1912 act was changed and jurisdiction given to the state probate court about Indians deceased property. The other was 1921. That is two times the law was changed. That was misunderstood by the full blood Indians. Nobody explained to them how it was. Now, at this time, this bill now before you, here, is the same way as the other two among the full blood members. There is still the misunderstanding of the 1921 act, and they do not understand this present legislation now. It is the same way, so they want to investigate this act first before it becomes a law. They like to know what is in the bill. They like to understand what it is for, and I myself am opposed to it, and I am of the same opinion as the other tribe. I stand for the tribe. I am

not against the tribe. They claim that this bill here is not the wishes of the Osages.

That is the wishes of the Osages, they want to have an investigation by the committee at home, so that both parties may understand thoroughly and we might get the true situation in the matter. That is what the tribe wants, and for myself I want it that way.

The CHAIRMAN. Do you mean to say by that the rank and file of the Osage Indians, especially the full bloods—and of course those who haven't been restricted haven't any interest in this—but the restricted Indians in your judgment want to return to that part of the 1906 act which entitled them to have all their money paid to them as fast as it accumulates?

Mr. McCARTHY. That is what they ask for.

The CHAIRMAN. That is what they want?

Mr. McCARTHY. Yes, sir.

The CHAIRMAN. Will they oppose any legislation that seeks to put restrictions on their moneys, or are they just opposed to this particular legislation to that effect?

Mr. McCARTHY. They are opposed to the legislation.

The CHAIRMAN. Do they want the acts of 1912 and 1921 repealed also?

Mr. McCARTHY. Well, they did not say anything about the 1912 act.

The CHAIRMAN. Isn't this the fact: Don't a great many Indians feel like, that since they bought this land themselves, the Government ought not exercise any restrictions on it, except to collect the money and pay it over? Aren't there a good many of them that feel that way about it?

Mr. McCARTHY. You mean the land?

The CHAIRMAN. The moneys arising from the oil, etc. I am just trying to get at what they really do want.

Mr. McCARTHY. In the first place, we want to put ourselves in the protection of the Secretary of the Interior in the act of 1906.

The CHAIRMAN. Yes.

Mr. McCARTHY. And the 1912 act takes that jurisdiction away from the Indian Bureau and puts it into the State, and since that, our people have restrictions removed, full-blood members, without any investigation at all, and then they sell all their land and get all the trust fund; that is where the Indian commenced to doing all these things and spending all their money bad, and that is why I say we did not understand the 1912 act.

The CHAIRMAN. Isn't this the part that you do not understand, that those who were unrestricted got all their money, and certain others do not get all their money, and has not that caused a great deal of controversy? Are they satisfied with any sort of restrictions at all? That is what I am driving at.

Mr. McCARTHY. Well, they don't want to be under any restrictions.

The CHAIRMAN. I thought that was about the size of it. Go ahead and say what you want to say.

Mr. McCARTHY. About the guardian, the Osages never say anything about these guardians, and as I said a while ago, the act of 1906 used to have a certain person to be a guardian, but after the 1912

act was passed, some of the Osages held up their money by the agents, by the lawlessness and spending money for nothing and drunkards, and then they have a guardian for those kind of people, and later, just before 1921, Mr. Wright, I think he made some Indians have a guardian. They owed debts and come over to Mr. Wright to talk, and Mr. Wright asked them to go down to town and get their guardian and appoint him. Some of these members they have a guardian through agents. Since 1921 there are several Indians that have asked for the guardian, because they don't get enough of money. This \$1,000 is not enough for them for a quarter. Four thousand dollars a year is not for the use of spending, so they go to the man and ask to have a guardian so that they can get their extra money and try to get the payments. So in that manner, I do not believe that the Indians are worrying about these guardians. The cause of it is the act of 1921, and some of these guardians is caused by the agents.

The CHAIRMAN. You do not think they are worrying about the guardianship matter at all, then?

Mr. McCARTHY. No; I do not think so, so far as I know.

The CHAIRMAN. You mean by that that you don't think they are particularly opposed to guardians? Is that what you mean?

Mr. McCARTHY. They are not opposed to it.

The CHAIRMAN. Anything else you want to say, Edgar?

Mr. McCARTHY. I want to say something about the money set aside by the agency to use. We used to have a certain amount of money set aside for agency purposes, but now since four or five years, or maybe more, we do not know how much money is being used by the agent, and some of the members asked me to ask your committee about these field men that Mr. Wright has in the district.

The CHAIRMAN. Who is he?

Mr. McCARTHY. Well, he had four of them; in our district he is James P. Lawyer. Some of the members think he should not have a field man in that district, because the agency ought to have to do business, and in some way I can not say for sure but those people made report to the office for anything that the Indians do wrong, but they don't report what some of the Indians are trying to do that is right—that is, farming or anything like that. They don't report that, but anything that is bad is reported to the office and then to the Commissioner of Indian Affairs. They are worrying about those field men, some of the Indians, of course not all of them, but some of them is, and here Mr. Bacon Rind he said he is kind of worrying a little about those people.

The CHAIRMAN. You think they ought to be done away with?

Mr. McCARTHY. Yes, sir; that is what they think.

The CHAIRMAN. You think the Indians want them done away with?

Mr. McCARTHY. Yes, sir. Now, there is another thing. The Osage Tribe of Indians wants to have an attorney for several years, back to when Mr. Cato Sells was Commissioner of Indian Affairs, and the Commissioner of Indian Affairs and the Secretary told us to get another lawyer, because they themselves were a lawyer, but after two or three years we have been asking and then they told us to have

an attorney; they want us to get three men, two full blood members and a half-breed, to talk over this matter together and send the three men down here to the commissioner's office after the people have decided which man we should have given us for an attorney. But now three years ago the Osages asked for an attorney and in some way, we do not know how, it come to council to have an Osage attorney through the office of Mr. Woodward. Old Chief Nekahwahshetunkah had some petition signed by the tribe and presented it to the House some time about two years ago, I think, and we never heard anything of it.

The CHAIRMAN. What did you ask in that petition?

Mr. McCARTHY. We wanted to get another attorney, because Mr. Woodward here is an intermarried citizen, and we wanted to get some outside of a member, in another State of the United States.

The CHAIRMAN. You mean one not connected with the tribe by marriage, or otherwise?

Mr. McCARTHY. Yes, sir. So we thought in that way we could get the help in the way we wanted. Some of the full-blood members are still that way yet.

The CHAIRMAN. Mr. Woodward, though, was employed by your council, wasn't he?

Mr. McCARTHY. He was employed by the council and members of the tribe. That is all I care to say, Mr. Chairman.

The CHAIRMAN. How many of these field agents did you say they have?

Mr. McCARTHY. I think they had four.

The CHAIRMAN. Does anybody want to ask him any questions?

Now, I will ask you this question, Edgar. Do you represent any element of the tribe, or just yourself in giving your opinion of what the rank and file want?

Mr. McCARTHY. Myself and for the tribe.

The CHAIRMAN. In other words, you claim to represent the rank and file of the tribe as against the council? Is that the idea?

Mr. McCARTHY. The way the tribe is, I am.

The CHAIRMAN. In other words, you mean to say that you speak the real sentiments of the tribe?

Mr. McCARTHY. Yes, sir.

Mr. ALBERTY. May I be permitted to ask a question?

The CHAIRMAN. Yes.

Mr. ALBERTY. How many signatures have you on that petition there?

Mr. McCARTHY. I have got 47.

Mr. ALBERTY. And do you know that there is between 600 and 700 restricted Indians in the tribe?

Mr. McCARTHY. I have got another petition with 137 members.

The CHAIRMAN. The petition last referred to will be inserted in the record. It is as follows:

APRIL 1, 1924.

To the Congress of the United States:

We, the undersigned adult members of the Osage Tribe of Indians, hereby petition the Congress:

First, to pay us our money as it was paid under the allotment act of June 28, 1906;

Second, we hereby protest against any Osage legislation of whatsoever nature except the request above for our money.

Tom-Wamhe (his x mark), Nichoreebarer Webster, Rope (his x mark) Maker, Moa sha (his x mark) ke Tah, Moa pak (his x mark) Sap pig, Saint Bigheart, Domnie Daniels, Oliver R. Norton, Amorestage, Chas. West, Wah tsa (his x mark) ah bah, Neudh, James Bigbeast, Joe Watson, Jno. Starr, George Pratt, Mrs. Little Starr, (her x mark), Mary West, Tas Sun (his x mark) Wen, Wah bah (his x mark) bun pak, Millie Morton, Little (his x mark) Starr, Ellen Spurgeon, Maggie Goode, W. Helen Scott Maker, Nicholas Webster, Joseph Daniels, Esther Daniels, Joseph Mason, Rose Mason, Clara Wilson, Anna Bates Other, Nellie Daniels, Pearl McKinley Cox, Grasr (his x mark) Kenworthy, Mary (her x mark) Drexel, Clara Nash, Mollie Burkhart, Gurnay Miller, He-to-oppe (his x mark), Eliza Bigheart, Rosie Osage Allen, Grace Miller Case, North Hamilton, Mable Haskell, Rose Haskell, Wall Goode, Josephine Watson, Wah Ko (his x mark) so Moie, Mollie La Mont Mercer, Mary Roan, Hu ah (his x mark) to me, Che sho (his x mark) hu Kah, Magdaline McClure, Ralph Hamilton, Anna Morton Foust, Adam Hepey, Angelle McKinley, Wah Ko Ki (his x mark) he Kah, Abe White, John McKinley, Joe Shunkahenolah, Robt. Morrell, John Oberly, Claude Smith, Wahshah she (his x mark) me tsa be, Chas. (his x mark) West, Dora Penn, Hoke ah sea, Mary Lohowa, Frank Lohowa, Joseph Bird, Henry Lohah, Ashe gat (his x mark) bre, Gra to (his x mark) me tsa bre, Dan G. West, Ross Maker, Kihekabushshe (his x mark), Herman McCarthy, Louise Maker, E. A. Hamilton, Noah Hamilton, Tom Big Chief, Edna Townsend Core, Lotabeak (his x mark), Susie Killon, Eva Beane, Laurin Hoklabra, Cha-sho-shin-kah (his x mark), Otis Russell, Kate Barker, Wiley Whitewing, Mary Whitehorn, James Maker, Pearl Buffalo, Mary Morrell, Hupahtakah (his x mark) No. 20, Mary Pitts, Humpotak (his x mark) 70, Egronkohiskin (his x mark) koh, Harry Red Eagle, Mary Red Eagle, Nettie McCarthy, Margaret Shunkahmolah, Florence Big Eagle, Bird Tumar, F. R. Hawley, Louise Tuman, Ira Hamilton, Chas. Whitehorn, Josephine Lohah, Mrs. Tom (her x mark) Big Chief, Pendleton Strike-axe, Rosie Malone, Mary McFall, Esther Blane, Ralph Malone, Elsie K. Shelton, Chas. Mosbunkasbey, Chas. Hampton, Chas. McDouxau, Paul Albert, Pah she he, James G. Blaine, Min Kah she, Pah pu son tsa, John McFall, Estah a gra she, Julia Waters, Joseph LaSarge Hum pah to Kah, Nah-hah-sah-me, Mary Wildcat Mayse.

The CHAIRMAN. Does anybody else want to ask any other questions? That is all.

Now, who else, Mr. Woodward? Is there anybody else? Of course, I do not mean to say that this was your witness, but have you any witnesses that you wish to present?

Mr. WOODWARD. I do not know, unless the chief wants to make a statement.

The CHAIRMAN. Is there anybody else to be introduced this afternoon except Judge Humphreys?

Mr. WOODWARD. I think Roman Logan wants to be heard.

The CHAIRMAN. What position does he hold in the tribe?

Mr. WOODWARD. None; he is just a member.

STATEMENT OF MR. ROMAN LOGAN

Mr. LOGAN (through interpreter). Mr. Chairman and honorable members of the Senate committee, I appreciate your kindness in offering me a chance to speak here. I came here with a delegation and the council, following them as outsiders, to know what they are going to do. I want to see what their position is.

The most important thing I am interested in is the money matter of the Osages, and I want to find out what the council is going to do for the tribe. For three years back, since the Snyder bill became a law, I have been appearing in Washington—for three successive years. To my way of thinking in looking at that law, I thought it was right and proper that such a law should be passed, guarding against any harm that may come in the matter of payments of the money of the Osage Tribe. Since that law has been enacted I have heard many complaints by the Osages that the money that they received, the \$1,000 that they received, was not a sufficient allowance to keep up the expenses at the home. Since the Osages have expressed their wishes to me and empowered me to appear before the Commissioner of Indian Affairs, and I have my statement recorded in that office.

I think, as far as I can remember that statement, that I asked for a more liberal allowance for these older members of my people, the Osages. I have not favored regulations governing restriction of these Indians, but I have asked for more money for my people, more liberality to be shown to them. The reason the Indians want more money to be given to them is that they want to expend it on their homes. They want improvements. No matter if the money is restricted, so that the Indian can be allowed a little more for this specific purpose, are the wishes of my people.

You see before you, Mr. Chairman, the bill from the House, the Snyder bill, wherein the money is restricted to \$10,000 to every member of the tribe for improvements. My people are opposed to that thing. They do not want it. It is not sufficient money allowed to them for improvements. For that reason, those objections by the Indians, is why I am here to-day to disapprove that part of the bill pertaining to the allowance to the Osages of \$10,000 for improvements.

In the past, I have never expressed myself in regard to these guardians, but I will express myself now. In the act of 1906 there is a provision where they specify who shall have guardians. That law says orphan minors, the children without a father and mother, should be allowed guardians, and that law further stated people of older years, a member of the Osage Tribe, who are using their moneys badly, that such person is covered by the law to have a guardian. That law was made to protect the drunkard, the man who is wasting his money. That law covered very plainly who shall have the guardian—the man who is misusing his money, the man who is drinking, the man that is gambling his money away. That is my view on the law on the guardian, who shall have a guardian, referring to the act of 1906.

The CHAIRMAN. Ask him this: If I understand you, then, you don't think guardians ought to be put over an Osage Indian unless he comes within those classes that are drinking and dissipating their money, and minors?

Mr. LOGAN. Yes; I think the man who is striving to live right and do his best ought not to have a guardian.

The CHAIRMAN. Ask him if there are some men who are under guardianship that belong in that class that he thinks should not have guardians.

Mr. LOGAN. Yes, sir; I know of two cases.

The CHAIRMAN. Were they put under guardianship by the department or by the court of Oklahoma?

Mr. LOGAN. Those two parties, it was their own fault that they are under guardianship now.

The CHAIRMAN. Ask him if I understand him, he does not think there ought to be any restrictions on any of the Osage Indians who are of legal age, unless it is shown that they are dissipating their money by gambling or drinking.

Mr. LOGAN. Yes. In the statement I made I want you to consider the classes of people; the man who is striving to live right ought to be given the full rights of his money.

The CHAIRMAN. Is there any other statement that you want to make?

Mr. LOGAN. Yes, sir; I would like to further express that these Indians who have guardians are partly caused by department agents getting a guardian appointed for the Osage members, and I think the most blame is on the act of March 3, 1921, which causes a majority of the Osages to have guardians. Most of the Osage people who have guardians, it is their fault. The reason for that is that they go to the agent and ask about certain matters, and when they are turned away it causes some of these Indians to go back outside and apply for a guardian.

Mr. Chairman and honorable Senate committee, I am very glad that I have had the privilege of coming before you, and I am glad to come here and state the conditions of my people, and I thank you for the privilege of talking on these two topics, which I have expressed myself just as I feel about it.

The CHAIRMAN. Now, that is all except Judge Humphreys.

STATEMENT OF MR. J. M. HUMPHREYS, PROBATE ATTORNEY, OSAGE INDIAN AGENCY

The CHAIRMAN. This is Judge J. M. Humphreys, probate attorney for the tribe.

Mr. HUMPHREYS. Mr. Chairman and gentlemen of the Senate Committee on Indian Affairs, since you have called upon me for a statement, I want to say that the courts have said that the Indian question is an anomalous one. Nothing like it has ever existed in the history of legal jurisprudence. The Osages are governed almost entirely by special acts of Congress. The history of the legislation of 1906 was given you by Mr. Wright. The act of 1912 conferred jurisdiction upon the court, and that was referred to by him, and also the act of 1921.

Prior to the act of 1921, the Indian, regardless of whether he was a full blood or mixed blood, received all the month. Since the act of March 3, 1921, the restricted Indians, which are the full bloods and those who have more than half blood, were by act of Congress intended to be restricted to \$1,000 per quarter. It evidently was

the intention of the House Committee on Indian Affairs who prepared that bill to limit the amount to \$1,000 even in the hands of guardians. The House committee now understands that this was what was intended, but the courts have placed a different construction on that. They have defined the word "supervision" in that act to mean nothing more or less than to say that the superintendent pays the money over to the proper individual.

The CHAIRMAN. And if the guardian has been legally appointed, they have no right to refuse to pay him the money?

Mr. HUMPHREYS. No, sir; they are compelled to pay him the money under two court decisions, one by the Supreme Court of the District of Columbia and the other by the Supreme Court of our own State, following the decision of the Supreme Court of the District of Columbia, in a case I took up recently on this proposition, the one question alone, as to whether or not \$1,000 was restricted, and while the opinion has not been handed down finally and is being held up until the Supreme Court of the United States passes upon the case that they followed in the Supreme Court of the State—I do not suppose it would be wrong for me to read what the court said relative to the funds belonging to these Indians in discussing the act of March 3, 1921. The court says, although this has not been handed down officially, I do not think I am wrong in quoting what was said there; at least, I do not intend to. The court said:

This money belongs to this Osage Indian woman, a rightful heritage of her noble ancestors. Living under a civilization not of her choosing, the most liberal expense of funds in her behalf affords her little enough of deserved pleasures. What useful and rightful purpose can be served by a niggardly conservation of her estate at the sacrifice of the satisfaction of her just desires. It would merely leave at her death a larger estate to pass into the hands of her son who needs none of her fortune—a larger estate from which she can be put to rest in a more gorgeous casket reposing beneath a greater bed of roses which she then can not adore. To attain such an undesirable result, we have no inclination to give to this act of Congress the strained and unnatural construction urged by the plaintiff in error.

The plaintiff was Mr. Wright, for whom I appeared. Our contention was that the act of Congress made the courts of Oklahoma, the special and county courts and the other courts on appeal, Federal agencies. The court said this was not in this bill. The only question was whether or not there was any restriction upon the guardian, and held there was none. Whether the court will back up from this position or not, I do not know, and I say it in all reverence and respect for the court when I have read what I have, and I have no criticism to offer.

The CHAIRMAN. If I understand it, you mean to say that if the Supreme Court reverses the District of Columbia court, then this decision will never be entered of record?

Mr. HUMPHREYS. I think not. My understanding is the supreme court of the State has held up for some time—in other words, I do not want to read it into the record for this purpose, but if the Supreme Court should follow the Lane case in the Supreme Court of the District of Columbia, then this will be the decision that is handed down.

The CHAIRMAN. By the supreme court of the State?

Mr. HUMPHREYS. By the supreme court of the State; yes, sir. With regard to the law under which the agency operates, I am not going to take a great deal of time of this committee, but I am going

to just tear out page 55 of the record made in the House, and let that be copied. You will find the act in Thirty-seventh Statutes at Large, page 86, and section 3 of that act provides as follows:

SEC. 3. That the property of deceased and of orphan minor, insane, or other incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the State of Oklahoma, which are hereby extended for such purpose to the allottees of said tribe, shall, in probate matters, be subject to the jurisdiction of the county courts of the State of Oklahoma, but a copy of all papers filed in the county court shall be served on the superintendent of the Osage Agency at the time of filing and said superintendent is authorized, whenever the interests of the allottee require, to appear in the county court for the protection of the interests of the allottee. The superintendent of the Osage Agency or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators, and guardians or other persons having in charge the estate of any deceased allottee or of minors or persons incompetent under the laws of Oklahoma, and whenever he shall be of the opinion that the estate is in any manner being dissipated or wasted or is being permitted to deteriorate in value by reason of the negligence, carelessness, or incompetency of the guardian or other person in charge of the estate, the superintendent of the Osage Agency or the Secretary of the Interior or his representative shall have power, and it shall be his duty, to report said matter to the county court and take the necessary steps to have such case fully investigated, and also to prosecute any remedy, either civil or criminal, as the exigencies of the case and the preservation and protection of the interests of the allottee or his estate may require, the costs and expenses of the civil proceedings to be a charge upon the estate of the allottee or upon the executor, administrator, guardian, or other person in charge of the estate of the allottee and his surety, as the county court shall determine. Every bond of the executor, administrator, guardian, or other person in charge of the estate of any Osage allottee shall be subject to the provisions of this section and shall contain therein a reference hereto: *Provided*, That no guardian shall be appointed for a minor whose parents are living unless the estate of said minor is being wasted or misused by such parents: *Provided further*, That no land shall be sold or alienated under the provisions of this section without the approval of the Secretary of the Interior.

Section 3 is the authority given to the superintendent to appear in court, the Secretary of the Interior or the Commissioner of Indian Affairs, or any of his representatives. At this time I represent the Commissioner of Indian Affairs and the Secretary of the Interior in the capacity of financial clerk. There is no such office as probate attorney for the Osage Agency, although I act for Mr. Wright as his attorney, and appear in all these probate proceedings as attorney for Mr. Wright.

Section 3 provides that jurisdiction is given over the property of decedents, orphan minors, and insane. The law provides incompetency to be determined by the courts of Oklahoma, and then it provides that it shall be the duty of the superintendent to appear, or that he may in his discretion hold hearings and investigate the conduct of guardians, administrators, or executors, or anyone having in charge the estates of any deceased allottee, giving him the right to take an appeal to all the courts and proceed either civilly or criminally, if the Osage allottee's estate is being dissipated.

Under the act of 1912, giving jurisdiction to the county court, there have been appointed guardians over 436 Osage allottees of both mixed and of the full blood. There are 210 persons who act as guardians for these 436 Indians. There are 215 adults of the full blood and 96 minors of the full blood; there are 57 adults of the mixed blood and 68 minors of the mixed blood. There are also a number of wills, and executors, administrators and others, which all makes nearly 550 cases over which the superintendent of the Osage Agency

takes jurisdiction and over which I as his attorney undertakes to protect the estates of these Indians. I will now offer for the record names of the Indians who have guardians, if there is no objection.

The CHAIRMAN. Very well.

(The list referred to is as follows:)

LIST OF WARDS AND DECEASED ESTATES

- | | |
|---|--|
| 143. Stink, John (Ho tah moie), No. 350. | 1065. Onhand, Ralph, No. 582. |
| 155. Hayes, Lawrence L. | 1083. Wilkie, Andrew E. |
| 169. Taylor, Anna, James E., John F., Agnes, Fannie, Hiram. | 1085. Malone, Ralph, No. 483. |
| 216. Goode, Margaret (Wah hrah lum pah). | 1090. DeNoya, Elizabeth. |
| 388. McKinley, Pearl (Eupahshonkahne). | 1100. Doolin, Alta Josephine, No. 2201. |
| 412. Pryor, Mary. | 1103. McKinley, William, No. 379. |
| 414. Wah te sah, No. 421. | 1105. Todd, Harold. |
| 426. O'Dell, Clyde. | 1109. Barber, Augustus and Morris. |
| 431. Roan, Fred. | 1110. Duffy, Nellie Boulanger. |
| 432. Matterson, Grace Roan. | 1115. Wheeler, Mary. |
| 440. Black, Augustine, No. 474. | 1121. Butler, Grace Berry. |
| 473. Drum, Charles (Wah tsa ki he kah). | 1125. Pease, Marion Hallet, minor. |
| 474. Rogers, John, Sm. C., Isabella. | 1138. Bratton, John I. |
| 514. Sho e ne lah, No. 66. | 1140. McDougan, Charles, No. 541. |
| 522. Jones, Jesse Earl. | 1148. Pah she he, No. 471. |
| 524. Bigheart, Pearl and Charles. | 1164. Panther, Robert, No. 444. |
| 563. Morrell, Nellie, John. | 1173. Brown, Helen, Lula, and William. |
| 636. Chouteau, Louis P. | 1177. McKinley, James (Wah tsa a tah). |
| 704. Warrior, Robert, No. 552. | 1178. McGath, Margaret. |
| 706. Pappin, Joshua J. | 1185. Co she he, Hope. |
| 707. Pappin, Jules C. | 1198. Bigheart, Edward. |
| 708. Canville, Agnes L., No. 1053. | 1211. Pryor, John. |
| 731. Crow, Amos and Clifford. | 1218. Pah se to pah, No. 335. |
| 744. Fuller, Charles Edmund. | 1228. Doolin, Wallace Edward. |
| 748. Strike Axe, Cap (O sah ke pah). | 1238. Blaine, Walker. |
| 756. Shon kah, No. 464. | 1240. Strike Axe, James. |
| 764. Webb, Ruby. | 1246. Webb, Effie. |
| 772. Mathews, Florence. | 1249. Daniels, Clarence, No. 855. |
| 790. Spurrier, Villa Tinker. | 1252. Py ah hun kah, Harry, No. 502. |
| 797. Dennison, George O., No. 1144. | 1262. Osage, Joe (Wah tsa a tah). |
| 808. Bradshaw minors (3). | 1291. Mou kah soppy, No. 35. |
| 858. Nah me tsa he, No. 729. | 1296. Stotts, James E. |
| 867. Boulanger, Minnie and Celeste. | 1299. Bigheart, Belle L. |
| 898. Musgrove, Willis and Carl R. | 1308. Lombard, John and Albert. |
| 901. Hayes, Margaret. | 1309. Abbott, Hattie. |
| 914. Rogers, Frank, No. 1846. | 1312. Bruce, John, No. 820. |
| 915. Murray, Maurice C. | 1316. West, Louise, No. 208. |
| 925. Pappan, Roosevelt and Frank A. | 1317. West, Charles, No. 152. |
| 926. McGuire, Charles A. | 1321. Dunlap, George, No. 362. |
| 929. Alberty, Gale. | 1324. Nash, Clara. |
| 936. Me tsa hi ke, Mo ho gla. | 1330. Martin, Charles, deceased. |
| 941. Bennett, Teresa and Irene. | 1333. James, Jessie. |
| 958. Panther, Charley. | 1334. Hendricks, George, Jules, and Ida May. |
| 959. Carson, Tom, No. 14. | 1336. Pease, Paul. |
| 967. Mills, Joseph. | 1343. White, Abraham and Joseph. |
| 970. Red Corn (sy e gla in kah). | 1345. Tuman, Louise Black Dog, No. 387. |
| 992. Martin, Nannie V., No. 2199. | 1348. Loh owa, Frank, No. 683. |
| 997. Cottingham, Logan, No. 1101. | 1356. Hall, Alfred. |
| 1028. Moncravie, Henry E., No. 1595. | 1367. Donovan, Charles, jr. |
| 1031. Hilton, Agnes Rogers. | 1369. Killion, Susie, No. 648. |
| 1039. Ducotey, Frank S. | 1379. Clarke, Kenneth. |
| 1047. Hunt, Robert M., jr. | 1382. Hunter, Louise. |
| 1051. Wheeler, Ben and Frances. | 1383. Riddle, Herman Franklin. |
| | 1393. Dickerson, Don, No. 153. |
| | 1394. Nah hah sah me, No. 436. |
| | 1395. Pah pu son tsa, No. 520. |

1396. Gra to me tsa he, No. 630.
 1397. Bigelk, Grace, Belle and, Charles.
 1398. De Noya, Genevive.
 1407. Cannon, Alex, No. 109.
 1412. Wah to sah, No. 111.
 1417. Tom pah pe, No. 819.
 1418. Bryant, Beatrice.
 1434. Butler, Eugene, No. 136.
 1439. Pitts, Irene and Anna.
 1447. Lewis, Violet.
 1452. Lynn, Theresa M., No. 1487.
 1456. Mosier, William T.
 1459. Daniels, Esther Little Soldier.
 1462. Nolegs, Larry.
 1463. Wah ko sah moie, No. 22.
 1464. Bangs, Myron.
 1465. Albert, Paul.
 1473. Strike Axe, Marie.
 1477. Whitehorn, Ralph, No. 18.
 1478. Simpkins, Delos.
 1480. Miller, Francis.
 1482. Tuman, Bird, No. 296.
 1494. Pah se to pah.
 1496. Pah se to pah, Louis.
 1500. Bigheart, Elizabeth and Dord-
 thy.
 1510. Malone, Rosa.
 1512. Neal, Francis.
 1513. Hun kah me, Carl Ke mo hah,
 Lotahsah.
 1515. Co she he, Marion.
 1519. Fletcher, Chas. T., No. 128.
 1520. Penn, Eddie.
 1522. Ke mo hah, Tom, No. 658.
 1524. Drexil, Ida and Verna, Lewis.
 1526. Maker, Roy.
 1528. Lohah, Simon, No. 798.
 1539. Blaine, James G.
 1546. Ware, Edith (Hum pah to kah).
 1548. Little Soldier, Franklin C.
 1550. Smith, Claude, Robert, Mary,
 Kemohah, Ida.
 1556. Conklin, Mary.
 1560. Ware, Elijah (Pete), No. 718.
 1561. Ware, Samuel.
 1562. Ware, Charles (Nom pe se).
 1564. Ware, Gladys.
 1665. Warrior, Russell, No. 521.
 1569. Claremore, Amanda, No. 308.
 1575. James, Louis (Kah hah ah gra).
 1578. Albert, Kate, Ne kah she he.
 1580. Tayrien, Mae Alberta.
 1583. Brown, Charles (Shon kah), No.
 667.
 1584. Smith, Minnie, No. 151.
 1587. Wah shah she me tsa he.
 1593. Mo se che he, No. 589.
 1598. Scott, Can.
 1599. Hunter, John.
 1605. Vest, George.
 1606. Davis, Ola, Revard and Carey.
 1611. Mackey, Jack, Joseph, Wilma,
 Clarebel.
 1615. He to oppe, No. 864.
 1623. McKinley, James (Ah kah),
 No. 378.
 1630. Kirk, Wilson, No. 177.
 1632. Wood, John, No. 831.
 1639. Scott, Walter.
 1640. Cannon, Joseph, No. 106.
 1644. Copperfield, Maggie.
 1648. Morrell, Joe, (Hlu ah wah kon-
 tah).
 1649. Morrell, Maggie (Wah shah me
 tsa).
 1650. Morrell, Johnnie.
 1651. Soldani, Josephine.
 1656. Ellis, Susie Whipkey.
 1663. Daniels, Dominie, No. 310.
 1664. Hunter, Juanita.
 1667. Hun kah hoppy, No. 261.
 1668. Revard, Joseph Arthur.
 1669. Revard, Curtis Theodore.
 1674. Pryor, Louis, No. 611.
 1677. Tolson, Mary J. Deal, No. 1186.
 1678. Deal, James C. and William A.
 1680. Spurrier, Alice, Mary, Luella,
 Jane.
 1682. Copperfield, Louis and Walter.
 1688. Roberts, Martha Washington.
 1689. Ware, Joseph.
 1693. Butler, Patricia, No. 296.
 1694. King, Walter.
 1695. Mosier, Ida May.
 1700. Mosier, Jacob, No. 1573.
 1701. Tinker, James Leroy.
 1702. Bonnicastle, Augie, No. 725.
 1705. Farnsworth, Rosa Osage? Hesh
 tome.
 1708. Bigheart, Eliza Osage.
 1720. Morrell, George and Wah tsa a
 tah.
 1722. Wheeler, Frances Barker.
 1723. Lookout, Charles.
 1728. Cox, Gilbert.
 1729. Cox, Dorothy (Mo se che he).
 1730. Pah se to pah, Kathleen.
 1731. Pah se to pah, Christopher.
 1732. Pittman, Archie A.
 1733. Cedar, Willia, incompetent.
 1735. Whitetail, John P., No. 491.
 1743. Carson, Phillip, No. 18.
 1745. Little Star (E to moie).
 1746. Wah to sah.
 1747. McDougan, Alfretta.
 1749. McGath, John.
 1753. Revard, Mark S., No. 1767.
 1755. Mackey, W. B.
 1759. Little Star, Rose (Tom pah pe),
 No. 188.
 1760. Star, John (Gra tah ah kah).
 1761. Hlu ah to me and Ki he kah
 nah she.
 1763. Michelle, Arthur Wilson.
 1765. Morrison, Katherine Fletcher.
 1766. Fletcher, Mamie (Me sah e).
 1767. Perrier, John T.
 1769. Elkins, Mary (closed).
 1771. Panther, Clark.
 1775. Tallehief, Clara and Mary.
 1777. Rogers, Lewis A.
 1791. Mosier, Edna Tinker.
 1801. Ririe, Nellie, No. 1798.
 1802. Ririe, Arthur.
 1804. Roberson, Sarah Lohah.
 1806. Quinton, Alex.

1810. Pettit, Veva, May, John, Lou, Ruby.
 1814. Labadie, Joseph.
 1815. Burnett, Emma.
 1818. He ah to me, No. 242.
 1820. Wing, Walla Fish White.
 1822. Blaine, Eugene, No. 429.
 1830. Davis, George.
 1831. Hun wah ko, No. 196.
 1832. Maker, Josephine, No. 462.
 1836. Waters, Julia Dunlap, No. 270.
 1842. Fletcher, William.
 1843. La Sarge, Joseph.
 1844. La Sarge, Harold.
 1846. Lasley, Fannie, No. 164.
 1853. Martin, Irene, Cecil, and Albert.
 1854. Bacon Rind, Christine Martin.
 1856. Brokey, Phillip (Num pah se).
 1863. Roan, Mary.
 1865. Barber, Clifford and Jack.
 1867. Logan, John A., Mary.
 1868. Pah pu son tsa.
 1870. Whitecloud, Robert.
 1871. Strikeaxe, Pendleton, No. 603.
 1872. Strike Axe, Rosa (Mose che he).
 1873. Pryor, Julia, No. 571.
 1874. Maker, Edgar.
 1876. Bighorse, Ida (To op pe).
 1877. Brave, Chas., No. 503.
 1878. Brave, Mary Strikeaxe, No. 504.
 1879. Brave, Louis, No. 506.
 1881. Watson, Mary.
 1882. Mo se che, No. 469.
 1883. Red Eagle, Rose, No. 532.
 1884. Wood, Rose, No. 559.
 1886. Henderson, Josephine.
 1887. Henderson, Irene.
 1888. Peace, Henry, No. 339.
 1889. Me tsa he, No. 853.
 1890. Harvey, Mary, No. 46.
 1893. Logan, Joseph, No. 643.
 1894. Steel, Tom.
 1898. Pratt, Henry, No. 697.
 1899. Hum pah to tah, No. 543.
 1900. Ponca, Dora.
 1901. Ponca, Carl.
 1902. James, Laura, No. 799.
 1903. Wagoshe, John, No. 549.
 1906. Daniels, Jos., No. 311.
 1907. Buffalohide, Agnes, No. 601.
 1908. Big Elk, Cora, No. 706.
 1909. Bighorse, Peer, No. 545.
 1910. Harvey, Theo. R., No. 49.
 1913. Hickey, Adair.
 1914. Walker, Josephine Jump, No. 438.
 1915. Davis, Edna.
 1916. Hamilton, Ralph (Sintsa hu).
 1922. Blaine, James G.
 1924. Goode, Hall (E gro op pe), No. 318.
 1927. Ryder, Mary Lane.
 1928. Daniels, Joe M. (Wah sha she).
 1935. Daniels, Joe M. (Wah sha she).
 1936. Kennedy, Mary (Wah ko sah moie).
 1941. Martin, James.
 1944. Wyrick, Elmer F.
 1947. Brokey, Herbert, jr.
 1952. Gray, Clarence, jr.
 1958. Big Elk, Don S., No. 708.
 1963. Watson, Joseph.
 1965. Claremore, Francis, No. 691.
 1967. Michelle, Wesley W., No. 588.
 1969. Hamilton, Josephine, No. 381.
 1980. Redeagle, Alice, No. 742.
 1983. Tayrien, George A.
 1984. Buffalohide, Joseph, No. 600.
 1985. Pappin, James, No. 1635.
 1987. Rogers, Willie L.
 1989. Tayrien, David W.
 1990. Holloway, Andrew L., No. 1355.
 1992. Bighcart, George.
 2005. Wilson, Clara, No. 323.
 2010. Cedar, Paul.
 2012. Hilderbrand, George.
 2013. Bighcart, Willie.
 2014. Bighcart, Grace.
 2015. Bighcart, John.
 2016. Copperfield, Frederick and Marguerite.
 2018. Penn, Marguerite, May, Otis.
 2021. Wy e nah she No. 598, deceased.
 2025. Penn, Walker, No. 514.
 2032. Red Corn, Raymond.
 2037. Browning, John (Mon kah hah).
 2042. Benson, Dora St. John Neal.
 2046. Blaine, Dorothy.
 2047. Rogers, Helen D.
 2052. Linley, Margaret, Leonard, William James.
 2053. Revard, Ralph.
 2055. Me she tsa he, Charles, No. 522.
 2058. Archuleta, Mary Clara and Josephine.
 2061. Co she he, John.
 2063. Gentry, Blanch L.
 2064. Rogers, Antwine.
 2067. Mashunkahshey, Earl.
 2068. Hendricks, Augusta.
 2070. Gray, Lawrence.
 2080. Wheeler, Louis (closed).
 2087. Bighorse, Louise Copperfield.
 2091. Riddle, Arthur.
 2095. Anderson, Aouda Canville.
 2097. Ke mo hah, John, No. 656.
 2100. Revard, Edward L., No. 1755.
 2101. Revard, Everett A., No. 1756.
 2102. Wah kon tah he um pah.
 2103. Griffith, Goldie, Julia.
 2104. Pappan, Oakley.
 2109. Riddle, Joseph.
 2110. Claremore, John.
 2111. Claremore, Louis.
 2112. Harris, Louise Cedar.
 2114. Harlow, John N.
 2115. Webb, Allison, No. 400.
 2118. Riddle, Frank.
 2119. Whitecloud, Lucy Bangs, No. 404.
 2131. Herard, Paul.
 2136. Oberly, Sarah.
 2137. Oberly, John, No. 638.
 2139. McCoy, Anna Sanford.

2140. Copperfield, Frank.
 2141. Barber, Edgar L.
 2142. Mosier, Geneva Hardy Benson.
 2143. Revard, William J.
 2148. Wilson, Theo.
 2149. Redeagle, Frederick, No. 740.
 2155. Elkins, Earnest.
 2158. Clark, Magdeline, Robert, Katherine.
 2160. Oberly, Martha and Violet.
 2161. Stepson, Marvin.
 2166. Wagoshe, Charles.
 2167. Woodring, Orville.
 2168. Robinson, Mary Sarah Lohah.
 2169. Robertson, Flora Big Eagle.
 2170. De Noya, Catherine I.
 2172. Perriero, Ray L. D.
 2173. Burkhart, Mollie.
 2174. Redeagle, Jennie Spencer, No. 155.
 2179. Goad, Cecil.
 2180. Ivy, Rosa Lee Rogers.
 2181. Ivy, Claud Jack and Lee Frank.
 2182. Watkins, John F.
 2185. Bro ki he kah, No. 213
 2186. Breeding, Francis.
 2187. Potter, James L.
 2192. Bean, Eva (Hlu ah me), No. 472.
 2193. Wister, Mary Agnes, No. 64.
 2195. Lynn, Joseph, Patrick, and William R.
 2196. Callahan, Alfred.
 2198. Sanford, Silas, No. 406, deceased.
 2202. Cannon, John.
 2204. Me shah e, No. 475.
 2209. Q, Lizzie
 2211. Michelle, Charles, No. 494.
 2215. Anderson, Edward R.
 2221. Maker, Opal, Lea, George Lee.
 2223. Grant, Charles.
 2224. Bates, John, deceased, No. 91.
 2231. Hunt, Mary A.
 2233. Boring, Eva Tinker.
 2237. Lynn, Joseph, No. 1489.
 2241. Hutchinson, Charles V.
 2244. Brave, Andrew No. 505.
 2246. Javine, George M., deceased.
 2249. West, Charley (Kah shin kah).
 2252. Smith, Mildred.
 2253. Whitehorn, Arthur.
 2258. Miles, Laban, jr., No. 516.
 2259. Riddle, John L.
 2260. Ridge, Rhoda Wheeler.
 2261. Wheeler, Fred.
 2262. Boulanger, W. J.
 2263. Woodmansee, Mary, No. 369.
 2265. Cunningham, Lillie Bighorse Vest.
 2268. Roach, Herman B.
 2269. Mathes, Marion Donovan.
 2271. Mercer, Mollie, No. 84.
 2273. Martin, Charles (Me shet se).
 2274. Martin, Wilson, No. 1527, deceased.
 2275. Harvey, Luther, jr. (Wah tsa suah).
 2276. Bennett, Audrey.
 2277. Gra to me tsa he, No. 647.
 2278. Pehsemoie, Henry (Vah sah pah shin).
 2279. A she gah hre (Robt. Ashe grah rhe).
 2281. Wah shah hah me, No. 351.
 2282. Tayrien, Cyprian.
 2283. Hazelbraker, Daisy L. Ware, No. 719.
 2284. De Noya, Clement Edward.
 2285. He ah to me, No. 134.
 2286. Me gra to me, No. 137.
 2287. To wah gah she, No. 133.
 2290. Martin, Leo Boren.
 2291. Phillips, William.
 2292. Harrison, Ben H., No. 279.
 2294. Kemohah, Lenore.
 2295. Logan, Oscar, No. 644.
 2298. Pratt, George, No. 700.
 2299. Morrell, Charles.
 2300. Lombard, Hester C.
 2302. Hyatt, Susie L., No. 466.
 2303. Parker, Julia.
 2306. Revard, Mary B. Bockius.
 2307. Wah shin kah sopp, deceased.
 2308. Dunlap, Emily Harrison.
 2309. Bigheart, Annabell.
 2310. Mosier, Bismark, No. 1583.
 2314. Che sho shin kah, No. 681.
 2315. Brunt, George.
 2316. Coleman, Charles.
 2317. Elkins, Mary.
 2323. Martin, Olivia.
 2324. Del Orier, Julia.
 2325. Russell, Harris Eugene.
 2329. Kohpay, Loretto.
 2331. Bigheart, Joseph.
 2333. Roan, Henry.
 2339. Bigheart, Anna Luella.
 2340. Gra to me tsa he, No. 630-
 2345. Lyman, Paul S., deceased.
 2347. Lyman, Evelene, Jewel, and Noble.
 2349. Pocock, Lula Brown.
 2351. Lohowa, Mary, No. 862.
 2353. Smith, Reta Kyle.
 2359. Bacon Rind (Wah she hah), No. 744.
 2360. Smith, W. E. (white).
 2362. Del Orier, Lewis.
 2363. Plomondon, Clemy.
 2364. Harvey, Luther, No. 45.
 2365. Pettus, May, No. 321.
 2366. Pettus, Cornelia, Frank.
 2369. Bellieu, Steve, No. 930.
 2370. Che she walla, Floyd.
 2372. Long Bow (He lo ki he).
 2373. Pitts, George, No. 761.
 2374. Bacon Rind, Moses, No. 784.
 2375. Bellieu, Leo.
 2376. Brave, Julia Bacon Rind.
 2383. Swain, Henry E.
 2384. Edwards, Theo. and Julia Patterson.
 2385. Bacon Rind, George, No. 746.
 2387. Willis, Lillie.
 2389. Kilbie, Benedict (Earl), No. 1397.
 2391. Whitehorn, John, No. 517.

2392. Webb, Alice, No. 709.
 2394. Javine, Hasread, No. 1366.
 2395. Bigheart, Joseph, No. 784.
 2401. Brown, Louis M.
 2403. Hampton, Charles, No. 1295.
 2404. Chouteau, Charles.
 2405. He Shah Ah Le, No. 241.
 2409. McKinley, Maud, No. 83.
 2410. Dickey, John T.
 2413. Smith, Robert.
 2415. Bigheart, Ed, No. 970.
 2417. Fitch, Rosa Logan, No. 645.
 2419. Maker, George F., No. 815.
 2420. Lyman, Paul S., deceased.
 2422. Hunter, William. ✓
 2426. Bigheart, Clinton.
 2427. Bonnicastle, Arthur.
 2429. Bacon Rind, Rosa, No. 745.
 2431. Lynch, Jennie Strike Axe.
 2433. Labadie, Frederick.
 2437. Lohah, Henry (Ne Walla), No. 794.
 2438. Grammer, Henry. ✓
 2439. Conklin, Roscoe.
 2440. Me Hun Kah, No. 349.
 2441. He Lo Ki He (Bare Legs), No. 358.
 2443. Pryor, Marie, No. 257.
 2445. Hutchinson, Carlos.
 2447. Strike Axe, Foster, No. 606.
 2448. Murphy, Dora Strike Axe.
 2449. Rector, Dora Neal.
 2450. Bigheart, George.
 2451. Peh tsa moie, No. 631.
 2452. Bighorse, Andrew.
 2453. Bearskin, Mary Logan.
 2454. Snodgrass, Carrie M. Bryant.
 2455. Pratt, Josephine.
 2456. Logan, Mary, No. 677.
 2458. Grant, Charles, No. 361.
 2459. Gentry, Bluford, jr., and Joella.
 2460. Wheeler, Fred, No. 733.
 2462. Gray, Jennie, No. 661. ✓
 2464. Brunt, Edward A.
 2465. Gra to me tsa he, No. 203. ✓
 2466. McKinley, Alfred, deceased, No. 273.
 2467. Hutchinson, Charles V.
 2468. Neal, Clara May.
 2469. Miles, Laban, No. 507.
 2470. St. John, Opal.
 2473. Trumbly, Eliza.
 2474. Nun tsa wah hu, No. 105.
 2475. Pratt, Charles.
 2480. Bighorse, Joseph.
 2481. Bigheart, Jennie, No. 86, deceased.
 2484. Ne kah wah she tun kah, No. 182.
 2488. Copperfield, Louis.
 2489. James, Roy.
 2492. Tinker, N. A.
 2497. Rogers, Kenneth.
 2498. Ke mo hah, Joseph, No. 657.
 2501. Chouteau, Sophia.
 2502. Bigheart, John, jr., No. 785.
 2503. Penn, Bertha, Dorothy.
 2509. Claremore, Mary Brown, No. 703.
 2510. Gilmore, William H., No. 1275.
 2511. Kenworthy, Mary, No. 235.
 2512. Pitts, Warren, No. 763.
 2513. Mathews, Lorenza, No. 1509.
 2514. Collins, Tom.
 2515. Bighorse, Edward, No. 2169.
 2516. Bighorse, Mary, No. 547.
 2517. Whitehorn, John, No. 842.
 2519. Wheeler, Fred, No. 733.
 2522. Hamilton, Ira, No. 394.
 2523. Revard, Fay.
 2524. Revard, Maynard.
 2525. Boren, Minnie Bighorse.
 2528. Baker, John Thomas.
 2532. Logan, Joseph, No. 643.
 2534. Rogers, Louis, No. 1803.
 2536. Anderson, four minors.
 2538. Winett, Nettie White.
 2539. Me tsa hi ke, No. 568.
 2540. To wah gah she, No. 133, deceased.
 2543. Rogers, Louis, No. 1803.
 2544. Wah hre she, No. 40.
 2545. Miles, Leo.
 2547. Michelle, Wesley W., No. 588.
 2548. Tom pah pe, No. 819.
 2549. Revard, Nicholas T.
 2550. Rean, Juanita.
 2551. Roan, Charles H.
 2553. Wilson, Lione Mosier.
 2557. James, Minnie Harvey, No. 54.
 2558. Webster, Francis (Wah rhah lum pah).
 2559. Labadie, Bertha, No. 1516.
 2563. Norris, Lillie, No. 554.
 2565. Hlu ah to me, No. 31.
 2566. Smitherman, Hattie.
 2568. Moncravie, A. C.
 2569. Pah se to pah, No. 335, deceased.
 2575. West, Susie Pryor, No. 2172.
 2576. Brunt, Edward A.
 2579. Nah me tsa he, No. 729, deceased.
 2583. Nun tsa wah hu, No. 105, deceased.
 2586. James, Roy, No. 56, deceased.

Mr. HUMPHREYS. Of the guardians that are acting in Osage County that if I were county judge I would not permit to act as guardians. I think the majority and the large majority of the persons who are acting are men and women of high character. They are composed largely of bankers, lawyers, business men, real estate agents, and perhaps one or two farmers; at least there are not many farmers.

There are 36 persons who have two guardianships; there are 28 persons who have three guardianships; there are 22 persons who have four guardianships; there are 23 persons who have five guardianships; and one that has six. The law of our State provides that there shall not be more than five guardianships except corporations. The case in which there are six guardianships is a national bank at Hominy, which is acting under the Federal reserve system, and is entitled to more than five under our court's decision. I offer this to show the number of guardians and the number of guardianships of each person.

Guardian:

Chas. E. Ashbrook	5
H. G. Burt	2
H. H. Brenner	3
Pitts Beaty	3
O. L. Barlow	5
Guy G. Bennett	4
W. E. Browning	5
A. W. Comstock	4
W. S. Crow	3
H. N. Cook	3
P. R. Williams	5
L. M. Colville	5
H. G. Carson	4
Mrs. Cora Cales	4
W. E. Copeland	5
J. O. Cales	5
Citizens Trust Co	3
Albert Davis	3
H. R. Duncan	2
R. C. Drummond	4
Fred G. Drummond	5
L. D. Edgington	2
F. W. Farrar	4
G. C. Bolton	2
Homer Huffaker	5
D. Lefe Hubler	3
Bruce Hendricks	2
Paul N. Humphrey	4
Ed. T. Kennedy	5
W. G. Lynn	4
Richard D. Lavery	2
Arthur H. Lamb	3
George B. Mellott	3
S. S. Mathis	2
Ida R. Museller	2
Ben F. Mason	3
W. E. McGuire	4
A. N. Ruble	2
Clara Rickey	2
Bright Roddy	4
Bertha Red Corn	2
Sol H. Robinson	3
C. E. Riley	4
Robert Stuart	4
Chas. F. Stuart	5
E. S. Shidler	2
Dan Timmons	2
A. G. Williams	3
F. H. Tucker	2
Elmer Wheeler	3
A. S. Wright	2
H. O. Ostermeyer	2
Chas. F. Dodson	4
Thos. H. Linley	5
D. E. Johnson	3
J. E. Martin	5

Guardian—Continued:

Dora Shimonek	5
L. C. Shimonek	4
E. H. Mattingly	2
Wm. H. Smith	3
Loretta Buist	5
John R. Spurrier	3
J. B. Tolson	3
Paul Comstock	5
B. F. Maze	3
Elizabeth Tulk	2
Magella Whitehorn	2
B. R. McDonald	4
A. C. Seely	3
Wilfred D. Roach	2
Eves Tall Chief	3
Ed. C. Snyder	2
Colbert Wilkerson	3
The National Bank of Commerce, Hominy, Okla. (L. D. Edgington, trust officer)	6
Mrs. M. M. Richesin	3
H. J. Smith	4
Hazel Comstock	5
A. C. Hunsaker	2
F. Peyton Glass	3
J. E. Barber	4
Martin Carriker	5
Simon Henderson	3
W. H. Wittercraft	2
John L. Bird	3
J. H. Dull	2
L. L. Oller	2
Fred L. Shedd	5
A. N. Ruble	2
G. C. Clarke	2
Bluford M. Gentry	2
E. L. Gay	3
Ernest Burkhart	2
Henry Archuleta	2
A. W. Lucas	4
Harry Matlas	5
C. W. Stephens	4
J. G. Shoun	4
H. G. Cook	5
J. W. Halterman	5
Walter L. Gray	2
R. D. Colombe	5
C. T. Evertson	2
J. C. Cornett	2
L. R. Stith	2
W. J. Mahan	2
R. H. Stodder	4
E. M. Monsell	4
Mary M. Revard	3
Mrs. Fred Rowe	2
Wm. Riber	3

The right of appeal is given to the superintendent of Osage Agency, and since I have been there in the last seven or eight months I have exercised that quite diligently. It was exercised before I came there, however. But I have here a list of 79 cases, showing the county court number, the district court number, and the question appealed from the county court to the district court, and the disposition of the case, and for the purpose of hurrying this hearing to a close, I will introduce this into the record. It is just explanatory, and I will introduce it if there is no objection.

The CHAIRMAN. It will be received.

CASES APPEALED FROM THE COUNTY COURT TO THE DISTRICT COURT IN GUARDIANSHIPS AND ESTATES OF DECEASED INDIANS

1. District court, No. 6665. Agency appeal. County court, No. 514. In the matter of the guardianship of Sho e ne lah. Nature of appeal: Approving annual account of guardian, particular objection being made to the approval of the accounts of Matthews Wilson & Co. in the amounts of \$888.43 and \$1,146.75.
2. District court, No. 6743. County court, No. 2169. In the matter of the guardianship of Flora Roberson. Nature of appeal: Ray Roberson was not father of the minor and therefore not entitled to designate her guardian. Court ruled that child was born during wedlock and child's paternity could not be questioned and all evidence tending to show that the petitioner, Ray Roberson, was not the father of the child was ruled out. Appellant complains of this ruling and appeals therefrom.
3. District court, No. 6755. County court, No. 2192. In the matter of the guardianship of Hlu ah me. Nature of appeal: Appealed from appointment of William Riber as guardian. Disposition: Pending.
4. District court, No. 6756. County court, No. 2193. In the matter of the guardianship of Mary Agnes Wister. Nature of appeal: Appealed from appointment of William Riber as guardian. Disposition: Dismissed.
5. District court, No. 6902. Agency appeal. County court, No. 1849. In the matter of the estate of Frances Webster. Nature of appeal: Appeal from approval of annual report, particular reference being had to the claim of the Big Hill Trading Co. of \$2,378.46 for burial expenses. Disposition: Pending.
6. District court, No. 6939. Agency appeal. County court, No. 1623. In the matter of the guardianship of James McKinley. Nature of appeal: Appeal from approval of annual account, particular reference being made to expenditures in excess of \$1,000 quarterly and to payment of claims incurred prior to the act of March 3, 1921, without the approval of the superintendent of the Osage Agency. Disposition: Appeal dismissed.
7. District court, No. 6940. Agency appeal. County court, No. 2191. In the matter of the administration of the estate of Peter Clark, deceased. Nature of appeal: Approval of claims not shown on their fact to be claims of last illness and funeral expenses. Disposition: Dismissed.
8. District court, No. 7290. Agency appeal. County court, No. 1569. In the matter of the guardianship of Amanda Claremore. Nature of appeal: Appealed from order approving annual account of guardian, particular reference being had to the approval of the payment of \$1,000 to the Big Hill Trading Co., of which guardian was stockholder. Disposition: Dismissed.
9. District court, No. 7362. Agency appeal. County court, No. 2279. In the matter of the guardianship of A she gra hre. Nature of appeal: Overruling motion filed by said superintendent to revoke letters of guardianship. Notice of filing of petition said that application for appointment would be heard in the court room of the county court in Pawhuska on the 22d day of November, 1922, but instead the county court did not sit at Pawhuska on the 22d of November, 1922, but movant was advised that the said court sat at Hominy on said date and it then and there appointed said P. H. Harris guardian and issued letters of guardianship. Disposition: Motion of superintendent sustained.
10. District court, No. 7363. Agency appeal. County court, No. 1876. In the matter of the guardianship of To op pe. Nature of appeal: Appealed from order authorizing payment of a claim in the sum of \$2,024 by H. H. Brenner, guardian, to Pawhuska Furniture Co. Disposition: Dismissed.
11. District court, No. 7364. Agency appeal. County court, No. 2277. In the matter of the guardianship of Gra to me tsa he. Nature of appeal: Same as No. 11. Disposition: Motion of superintendent sustained.

12. District court, No. 7412. County court, No. 2263. In the matter of the estate of Mary Woodmancee. Nature of appeal: Appeals from that part of decree admitting will to probate as to unrestricted property. Disposition: Pending.

13. District court, No. 7561. County court, No. 1249. In the matter of the guardianship of Clarence Daniels. Nature of appeal: Appealed from an order that guardian make settlement for the moneys and other assets in his hands as such guardian direct with the said ward. Disposition: Dismissed.

14. District court, No. 7562. Agency appeal. County court, No. 2279. In the matter of the guardianship of A she gah hre. Nature of appeal: Appealed from order appointing guardian. Disposition: Appealed to supreme court of State by superintendent.

15. District court, No. 7563. Agency appeal. County court, No. 2278. In the matter of the guardianship of Va sah pah shin. Nature of appeal: Appealed from order appointing guardian. Same as No. 11. Disposition: County court ruling sustained and appealed to supreme court of State by superintendent.

16. District court, No. 7564. Agency appeal. County court, No. 2277. In the matter of the guardianship of Gra to me tsa he. Nature of appeal: Appealed from order appointing guardian. Disposition: County court ruling sustained and appealed to supreme court of State by superintendent.

17. District court, No. 7574. County court, No. 2055. In the matter of the estate of Charles Me shet sea. Nature of appeal: Appealed from among other things, Elda Webb was declared to be the surviving wife of Charles Me she tsa he, deceased, and order declaring Elda Webb to have an interest in the estate of said deceased. Disposition: Pending.

18. District court, No. 7589. County court, No. 2360. In the matter of the estate of W. E Smith, deceased. Nature of appeal: Appealed from order whereby court refused to appoint S. S. Mathis regular administrator of the estate of deceased. Disposition: Pending.

19. District court, No. 7615. County court, No. 1914. In the matter of the guardianship of Josephine Jump Walker. Nature of appeal: Appeals from order restoring to competency. Disposition: Appeal dismissed, reversed, and remanded.

20. District court, No. 7652. County court, No. 1833. In the matter of the estate of Arthur Lee Home. Nature of appeal: Appeals from order refusing to approve and allowing the account of administrator with reference to disbursements. Disposition: Pending.

21. District court, No. 7653. Agency appeal. County court, No. 1566. In the matter of the guardianship of Maggie Goode. Nature of appeal: Appealed from an order approving annual account of guardian, particular reference being made to the approval of expenditures of funds in excess of \$1,000 quarterly. Disposition: Pending.

22. District court, No. 7657. County court, No. 2126. In the matter of the estate of William Stepson. Nature of appeal: Appealed from order and decree determining heirs of the deceased and finding and determining that Prudence Curry was not an heir in estate and not holding and finding that Tillie Morrison and Marvin Stepson are sole and only heirs at law. Disposition: Judgment. County court sustained.

23. District court, No. 7714. County court No. 1862. In the matter of the estate of He shah ah hle. Nature of appeal: Court rejected will and refused to admit the same to probate. Disposition: Judgment.

24. District court, No. 7732. County court, No. 2070. In the matter of the estate of Lawrence Gray, deceased. Nature of appeal: Order denying probate of will. Disposition: Dismissed.

25. District court, No. 6223. County court, No. 1549. In the matter of the estate of Wah shah pe wah ko, deceased. Nature of appeal: Adjudged that petitioner was not entitled to all of that part of the estate which came to the above named Wah shah pe wah ko, deceased, as heir at law and as the wife of John Tsa pah shin kah. Disposition: Dismissed.

26. District court, No. 6267. Agency appeal. County court, No. 1728. In the matter of the estate of Gilbert Cox, deceased. Nature of appeal: Approving the final account of administrator and the approval of the expenditure of certain funds for the purpose of paying accounts filed with said administrator not authorized by Act of Congress of April 18, 1912. Disposition: Appealed to supreme court in which judgment of district court reversed decision of trial court. In this case dismissal was had on ground no appeal bond had been filed. Bond had been filed but mislaid. Appealed to supreme court.

27. District court, No. 6442. County court, No. 1336. In the matter of the estate of Paul Pease, incompetent. Nature of appeal: Restoration to competency denied. Disposition: Dismissed.

28. District court, No. 6515. County court, No. 1822. In the matter of the administration of Eugene Blaine, deceased. Nature of appeal: Appeals from that part of decree in which the court held and decreed that James G. Blaine was one of the heirs and entitled to a one-fourth interest in the estate of Eugene Blaine, deceased. Disposition: Judgment.

29. District court, No. 6551. County court, No. 2134. In the matter of the estate of Wah kon tah he um pah. Nature of appeal: Probate of will. Disposition: Reversed.

30. District court, No. 5711. County court, No. 1689. In the matter of the estate of Joseph Ware, incompetent. Nature of appeal: Appealed from hearing April 18, 1921. Court was without authority to make order authorizing guardian to purchase property. Disposition: Appeal dismissed.

31. District court, No. 5716. County court, No. 1570. In the matter of petition for probate of last will and testament of Frank Revelette. Nature of appeal: Appealed on refusal to probate of will. Disposition: Settled.

32. District court, No. 5747. County court, No. 1587. In the matter of the estate of Wah shah she me tsa he, deceased. Nature of appeal: Appealed on error of court decreeing that husband entitled to only one-fifth instead of one-third interest in estate. Disposition: Appealed to supreme court.

33. District court, No. 6190. County court, No. 1726. In the matter of the estate of Daniel McDougan, deceased. Nature of appeal: Appealed because court determined that Alfaretta McDougan was entitled to the entire estate of said deceased and that these claimants were held not being heirs of the said Daniel McDougan, deceased. Disposition: Dismissed.

34. District court, No. 8022. Agency appeal. County court, No. 1680. In the matter of the guardianship of Alice F. Spurrier et al. Nature of appeal: No service had upon superintendent. Court without jurisdiction to allow \$50 retainer fee. Court approved contract which is illegal, as question sought to be tried was a moot question. Disposition: Pending.

35. District court, No. 8023. Agency appeal. County court, No. 731. In the matter of the guardianship of Amos and Clifford Crow, unallotted minors. Nature of appeal: No service had upon superintendent. Court without jurisdiction to allow \$50 retainer fee. Court approved contract, which is illegal, as question sought to be tried was a moot question. Disposition: Pending.

36. District court, No. 8024. Agency appeal. County court, No. 1548. In the matter of the guardianship of Franklin Little Soldier. Nature of appeal: Same as 35. Disposition: Pending.

37. District court, No. 8025. Agency appeal. County court, No. 1810. In the matter of the guardianship of Lou Don Pettit et al. Nature of appeal: Same as 35. Disposition: Pending.

38. District court, No. 8027. Agency appeal. County court, No. 1334. In the matter of the guardianship of Ida May Hendriks, minor. Nature of appeal: Same as 35. Disposition: Pending.

39. District court, No. 8028. Agency appeal. County Court, No. 764. In the matter of the guardianship of Ruby Webb, minor. Nature of appeal: Same as 35. Disposition: Pending.

40. District court, No. 8051. County court, No. 1657. In the matter of the guardianship of Cora Revard Muller, incompetent. Nature of appeal: Appealed by guardian from order and decree disapproving guardian's final report and his first and second supplemental report and ordering and directing guardian to pay over to ward \$1,222.02, the amount found due. Disposition: Pending.

41. District court, No. 8105. County court, No. 1526. In the matter of the guardianship of Roy Maker, incompetent. Nature of appeal: Former guardian appeals from order discharging guardian for mismanagement of estate of ward. Disposition: Pending. March 5, 1924, judgment of county court affirmed.

42. District court, No. 8113. County court, No. 2489. In the matter of the guardianship of Roy James, incompetent. Nature of appeal: Appealed from order appointing Joseph D. Mitchell as guardian, for the reason that the evidence offered upon the trial of said cause does not sustain the judgment and the law of said cause does not warrant the judgment rendered therein. Disposition: Pending.

43. District court, No. 7733. County court, No. 2245. In the matter of the probate of the last will and testament of Wy e nah she. Nature of appeal: Petition to probate last will and testament denied and refused admission to probate. Disposition: Pending.

44. District court, No. 7747. Agency appeal. County court, No. 959. In the matter of the guardianship of Tom Carson. Nature of appeal: Judgment and decree wherein the court found that said court was without jurisdiction to hear a petition of the original appointment of the guardian of the said Tom Carson, and that the order appointing a guardian based upon said petition was void, and that letters of guardianship should not have been issued to George B. Mellott, and from a further judgment of the court that at this time the said George B. Mellott is acting as a de facto guardian and from the further finding of the court that upon the application of Tom Carson and his wife, Ella Carson, that the court would appoint a guardian to succeed George B. Mellott. Disposition: Pending.

45. District court, No. 7907. Agency appeal. County court, No. 1443. In the matter of the guardianship of Marie Crowthers, minor. Nature of appeal: Held that it was not necessary to serve papers upon superintendent of Osage Agency where minor is of Osage Indian blood and father is a white man and is living and not a member of Osage Tribe. Disposition: Pending.

46. District court, No. 7961. County court, No. 2279. In the matter of the guardianship of A she gah hre. Gratometsahe; two cases. Nature of appeal: Appeals from two orders wherein court allowed \$500 attorney fees and guardian \$400 fee and \$100 for expenses in each case. Disposition: Judgment allowing fee of \$350 each.

47. District court, No. 8004. Agency appeal. County court, No. 1512. In the matter of the guardianship of Frances Neal. Nature of appeal: Same as 35. Disposition: Pending.

48. District court, No. 8005. Agency appeal. County court, No. 1694. In the matter of the guardianship of Walter King, minor. Nature of appeal: Same as 35. Disposition: Pending.

49. District court, No. 8006. Agency appeal. County court, No. 1383. In the matter of the guardianship of Sherman Riddle, minor. Nature of appeal: Same as 35. Disposition: Pending.

50. District court, No. 8007. Agency appeal. County court, No. 1763. In the matter of the guardianship of Arthur Wilson Michelle, minor. Nature of appeal: Same as 35. Disposition: Pending.

51. District court, No. 8008. Agency appeal. County court, No. 1334. In the matter of the guardianship of Jules Hendricks. Nature of appeal: Same as 35. Disposition: Pending.

52. District court, No. 8009. Agency appeal. County court, No. 1464. In the matter of the guardianship of Myron Bangs, minor. Nature of appeal: Same as 35. Disposition: Pending.

53. District court, No. 8010. Agency appeal. County court, No. 1515. In the matter of the guardianship of Marion Co she he, minor. Nature of appeal: Same as 35. Disposition: Pending.

54. District court, No. 8011. Agency appeal. County court, No. 1518. In the matter of the guardianship of Cynthia Daniels et al. Nature of appeal: Same as 35. Disposition: Pending.

55. District court, No. 8012. Agency appeal. County court, No. 2273. In the matter of the guardianship of Charles Martin (Me she tsa he). Nature of appeal: Same as 35. Disposition: Pending.

56. District court, No. 8114. Agency appeal. County court, No. 2460. In the matter of the estate of Fred Wheeler, deceased. Nature of appeal: Appeals from order approving the claim of the Big Hill Trading Co. against estate of deceased in the sum of \$3,415.65 as burial expenses. Disposition: Pending.

57. District court, No. 8125. Agency appeal. County court, No. 2470. In the matter of the guardianship of Opal St. John, incompetent. Nature of appeal: Appealed from order declaring incompetent and appointing guardian. Disposition: Pending.

58. District court, No. 8229. County court, No. 2389. In the matter of the guardianship of Benedict Kilbie. Nature of appeal: Court erred in declaring ward incompetent and appointing guardian as matter of fact and law. Disposition: Pending.

59. District court, No. 8252. County court, No. 1417. In the matter of the guardianship of Tom Pah pe, incompetent. Nature of appeal: Appointment of guardian, W. E. Schaba, to whom it was requested that letter of guardianship be issued instead of Will H. Chappell. Disposition: Pending.

60. District court, No. 8383. County court, No. 1989. In the matter of the guardianship of W. D. Tayrien, incompetent. Nature of appeal: Appealed by ward for restoration of competency. Disposition: Pending.

61. District court, No. 8399. County court, No. 1663. In the matter of the guardianship of Dominic Daniels, incompetent. Nature of appeal: Ward appeals from order denying petition for restoration to competency. Disposition: Dismissed.
62. District court, No. 8378. Agency appeal. County court, No. 1664. In the matter of the guardianship of Jaunita Hunter, incompetent. Nature of appeal: Expended more than \$1,000 per quarter and restricted money used in purchase of real estate without court order. Disposition: Pending.
63. District court, No. 8013. Agency appeal. County court, No. 2018. In the matter of the guardianship of Margaret, May, and Otis Penn. Nature of appeal: Same as 35. Disposition: Pending.
64. District court, No. 8014. Agency appeal. County court, No. 1439. In the matter of the guardianship of Irene and Anna Pitts. Nature of appeal: Same as 35. Disposition: Appealed to Supreme Court by superintendent.
65. District court, No. 8015. Agency appeal. County court, No. 1731. In the matter of the guardianship of Christopher Pah se topah. Nature of appeal: Same as 35. Disposition: Pending.
66. District court, No. 8016. Agency appeal. County court, No. 1729. In the matter of the guardianship of Dorothy Cox, minor. Nature of appeal: Same as 35. Disposition: Pending.
67. District court, No. 8017. Agency appeal. County court, No. 1228. In the matter of the guardianship of Wallace Doolin, minor. Nature of appeal: Same as 35. Disposition: Pending.
68. District court, No. 8018. Agency appeal. County court, No. 1730. In the matter of the guardianship of Kathleen Pah se to pah. Nature of appeal: Same as 35. Disposition: Pending.
69. District court, No. 8019. Agency appeal. County court, No. 522. In the matter of the guardianship of Pearl Bigheart, minor. Nature of appeal: Same as 35. Disposition: Pending.
70. District court, No. 8020. Agency appeal. County court, No. 522. In the matter of the guardianship of Jesse Earl Jones, minor. Nature of appeal: Same as 35. Disposition: Pending.
71. District court, No. 8021. Agency appeal. County court, No. 520. In the matter of the guardianship of Grace and Charles Big Elk et al. Nature of appeal: Same as 35. Disposition: Pending.
72. District court, No. 8461. Agency appeal. County court, No. 2538. In the matter of the guardianship of Nellie White Winette. Nature of appeal: Court finds that Nellie Winette is mentally and physically incompetent to handle her own estate and appoints William Riber as guardian, to which agency appeals. Disposition: Pending.
73. District court, No. 5705. County court, No. 1465. In the matter of the guardianship of Paul Albert. Nature of appeal: Appeals from order overruling and denying petition asking the court to remove Henry Duncan as guardian. Disposition: Pending.
74. District court, No. 8251. County court, No. 1312. In the matter of the guardianship of John Bruce, incompetent. Nature of appeal: Appeals from order appointing Will H. Chappell, as guardian instead of W. E. Schwaba. Disposition: Pending.
75. District court, No. 8324. County court, No. 1493. In the matter of the estate of Lah blah walla (Three Striker). Nature of appeal: Appeals from that part of judgement holding and decreeing Cora Fury not to be the widow of Lah blah walla at the time of his death and declaring her not an heir and in refusing to declare her the sole and only heir of Lah blah walla, deceased. Disposition: Pending.
76. District court, No. 8343. County court, No. 2262. In the matter of the guardianship of W. J. Boulanger. Nature of appeal: Appeals from judgment of court approving guardian's report. Disposition: Pending.
77. District court, No. 8514. County court, No. 2558. In the matter of the estate of Frances Webster. Nature of appeal: Appeals from decree and order in which court overruled objections of Nicholas Webster in admitting to probate the purported will of Frances Webster, deceased. Disposition: Pending.
78. District court, No. 8546. Agency appeal. County court No. 2519. In the matter of the estate of Fred Wheeler, deceased. Nature of appeal: Appeals from an order in approving claim of the Big Hill Trading Co. for a casket in the sum of \$2,700 and a flag in the sum of \$115 for the reason that said claim is excessive. Disposition: Pending.

79. District court, No. 6586. County court, No. 412. In the matter of the guardianship of Mary Pryor. Nature of appeal: Appeals from order approving semiannual account of guardian, especially to expenditures in excess of \$1,000 per quarter. Disposition: Appealed to supreme court from an order dismissing appeal from county court.

Mr. HUMPHREYS. The question of fees, to my mind, is one of the questions where a great deal of conflict comes between the agency and the court, if you might call it a conflict, and I want to say in passing that unquestionably wherever there is a dual jurisdiction you can have more or less of conflict. In other words, there is a dual jurisdiction in the Five Civilized Tribes, and also a dual jurisdiction in Osage County. The Federal Government has certain functions to perform, the State courts have certain functions to perform, and wherever there is a conflict there is more or less friction. I think perhaps the greatest amount of friction that has been caused is over the \$1,000 per quarter, brought about by the understanding of the Indian Affairs Committee and the agency that it was the intention of Congress to limit the amount to \$1,000 every quarter to all the full bloods, and those mixed bloods who were more than one-half Indian people, and for that purpose in all of the reports that I examined, and I examine them all, I have repeatedly and am still filing exceptions to the reports favoring that question in this form [indicating].

On the question of fees, I have here assembled probably 50 or more cases giving the county court's number and audit of these cases so far as attorney's fees and guardianship fees are concerned. In order to be accurate about this matter it is necessary to have an audit of the entire case, examining all of the orders made upon applications filed, and I try to be fair about this matter and I want to say here in passing that in the House I was made to say something that I did not really intend to say, and that was that the average for guardian's fees and attorney's fees was about \$1,200 a year. I meant to say that that applied to the cases I had before me at that time. That was what I was discussing. I do not think it will run that high as a general average, and so stated further along in my testimony. I do this in order to be absolutely fair in every particular. I do not want to be unfair. I have nothing to lose or gain about it.

If there is no objection, I have here a number of cases, some of which were in the record before and some have been sent in since, and I will be glad to introduce them with the reservation that where my name appears and "Done at Pawhuska, Okla., this — day of —," need not appear in all of them. The rest of them, however, are a résumé.

The CHAIRMAN. No objection.

MEMORANDUM OF EXPENDITURES AND MONEY SAVED BY ACTION OF SUPERINTENDENT OF THE OSAGE AGENCY

Memoranda No. 1: In the handling of guardianships of the Osage Agency an attorney is required to be in constant attendance upon the county and district court, and an attorney representing the office is in attendance at all times when court is in session in order to protect the estates of Osage allottees, insane and incompetent Indians, who have been so decreed by the judge of the county court; minor orphan Osage allottees and other minor Osage Indians having guardians over their persons and estates.

In many cases now pending before the county court, from \$50 to \$500 in attorney fees have been saved, and in many cases from \$100 to \$1,000 have been saved

for the estate on guardianship fees and to prove this we shall refer to memoranda hereto attached as a few of the specific instances. Many of these fees are reduced before it becomes a matter of record. All guardianship fees and all attorney fees allowed by the county court are too high yet and are being objected to strenuously on all occasions.

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 2: In the matter of the estate of Gilbert Cox, deceased.

In this case Gilbert Cox, an Osage allottee, died, leaving two heirs, and a contest arose as to the division of the estate. Dorothy Cox, through her guardian, contracted with a firm of attorneys for a contingent fee to be allowed by the court. The attorneys presented a bill and the guardian of Dorothy Cox filed a claim in the county court against the estate of Gilbert Cox claiming an attorney fee should be paid to the attorneys representing Dorothy Cox; that \$20,000 was a reasonable fee. The court allowed \$20,000, and the case was appealed to the district court, and is now on its way to the Supreme Court of the State of Oklahoma.

The superintendent of the Osage Agency objects to all of this bill being allowed against the estate of Gilbert Cox, deceased, for the reason that it is a contravention of the act of March 18, 1912, which prohibits the collection of a debt of the heirs from the estate of the allottees. (See Sec. 7, act of April 18, 1912).

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 3: In the matter of the estate of Louis P. Chouteau, Osage minor.

In this case the attorney claims to represent the minor ward in the district court to recover a portion of an allotment of 160 acres of land. There had been no contract and the claim was presented to the county court on a claim of quantum meruit for \$1,500. The attorney for the agency objected to the allowance of the claim for the reason that it was unauthorized. Second, that it was unjust and excessive, and I asked that the land to be recovered be appraised. The Government appraiser appraised the land at \$3,170. Upon the examination of the attorney presenting claim for services rendered to this minor, it developed that he expected this fee irrespective whether he won the case or not. So far the county court has not allowed this claim.

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 4: In the matter of Robert A-she-gah-hre.

In this case the claim was filed by the guardian claiming \$500 for the guardian for extra services rendered, \$200 for expenses, and \$500 for additional attorney fees. On an appeal from the county court to the district court, in which the agency contested the right of the guardian to be appointed over the person and estate of a full-blood Osage allottee. This bill was cut \$200 in the county court on objection of the attorney for the agency. The agency appealed to the district court and the district court reduced the amount to \$150 for the attorney and \$200 for the guardian. This matter has not yet been appealed to the supreme court, although the same is being seriously considered.

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 5: In the matter of Gra-to-me-tsa-he.

Gra-to-me-tsa-he is the wife of A-she-gah-hre. The guardian in this case filed an application in the county court asking for \$500 guardianship fee, \$200 for expenses, and \$500 attorney fee. The attorney for the agency objected to these items and succeeded in having the fee reduced as in the case of A-she-gah-hre.

The superintendent of the Osage Agency appealed from the decision of the county court to the district court, and the district court allowed the same fee in this case as allowed in Memoranda No. 4. There was saved in the two cases to the estate of A-she-gah-hre and his wife the sum of \$1,700.

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 6: In the matter of the estates of 40 or more unallotted Osage minors.

In this case the attorney entered into a contract with the guardians of about 40 or more unallotted Osage minors and filed a claim and petition in the county court asking that permission be given to enter into a contract and receive a \$50 retainer fee in each case and a fee not exceeding 5 per cent of the amount of money to be recovered in a suit against the Secretary of the Interior in a mandamus to compel the honorable Secretary to turn over the money in his hands belonging to the minors, to their guardian. No notice of this case was served on the agency and the orders approving claim and contract were made without any notice. An appeal was taken to the district court in all these cases and in one case the district court affirmed the judgment of the county court, and this case is on appeal to the supreme court. All other cases of like nature will be appealed.

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 7: In the matter of the estate of Fred Wheeler, deceased.

In this case a claim was filed against the estate for a large silk flag for \$115, one coffin or casket, \$2,700 and a number of other items, totaling \$3,415.55, as the funeral expenses for the interment of Fred Wheeler, Osage allottee.

An objection was made to these items, as specially to a wagon sheets \$60, 10 robes \$160, 1 silk flag \$115, and a coffin \$2,700, together with other items. Testimony was taken and the court allowed said items, and an appeal was taken to the district court of Osage County on the ground that the amounts charged were excessive and exorbitant. An appeal on these claims in the district court has not yet been heard. Subpoena to these people has been filed by the attorney for the superintendent of the Osage Agency asking the production of the invoices showing the cost price of these various articles.

Done at Pawhuska, Okla., this 3d day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 8: In the matter of the estate of Fred Wheeler.

As mentioned in Memoranda No. 7, this case was tried before the court yesterday, December 4, and the superintendent of the Osage Agency appeared by his attorney and contested the claim of the Big Hill Trading Co. upon the proposition that the special administrator had no authority to pay any claim against the estate of Fred Wheeler.

2. That the charges were excessive and exorbitant. After the testimony was all in on the part of the claimant, the attorney for the superintendent of the Osage Agency on a point of law had the entire claim disallowed. The attorneys for the claimant, however, withdrew the claim amounting to \$3,415.55 without prejudice.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 9: In the matter of the estate of Marie Pryor. (Case No. 2443.)

In this case Marie Pryor is a restricted Indian. Her husband is William J. Pryor; he is an Osage Indian and has a certificate of competency.

The Fairfax National Bank and Liberty National Bank of Pawhuska filed a number of notes as claims against the estate of Marie Pryor, amounting to

\$3,514.21; \$584.21, being represented by a note to the Liberty National Bank, has been authorized by the superintendent of the Osage Agency. The notes given to the various banks on May 3, 1923, for \$1,650; on April 3, 1923, for \$80; on February 8, 1923, for \$50; on November 20, 1922, for \$50; and on April 9, 1923, for \$2,750, were objected to by the superintendent of the Osage Agency, and the objection sustained by the county court, and the items were disallowed, all except the item of \$584.21, which has been appealed by the superintendent.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 10: In the matter of the estate of Charles V. Hutchinson, No. 2467.

In this case an application was made to the county court to pay a promissory note to the Hudson Toner Motor Co. in the sum of \$2,582.59. The superintendent of the Osage Agency, by his attorney, objected to the payment of this note for a matter of hearing. Upon a hearing it developed that a great portion of the amount represented by the note was made during minority of Charles V. Hutchinson, and some portion of it has been of such date that the statutes of limitation had run against it. However, on the birthday of Charles V. Hutchinson, at which time he reached the age of 21 years, some one representing the Hudson Toner Motor Co. prevailed upon the Osage allottee to sign a note for \$2,582.59. The court indicated that he would disallow it, about \$1,500 of this claim, but at this time the journal entry to that effect does not appear of record in this case.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 11: In the matter of Pah-se-to-pah.

In this case the attorney representing the superintendent of the Osage Agency checked over the report of the guardian and found a mistake of \$25,350, which through inadvertence, the guardian has failed to account for. The evidence taken shows that the guardian's report was correct and the proper amount credited against the guardian, and the report was then approved by the court.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREY, *Probate Attorney.*

Memoranda No. 12: In one guardian case the attorney for the superintendent of the Osage Agency in checking over the report of the guardian discovered that the guardian was short apparently in his report \$600, which was corrected and proper credit given on the report, which was then approved by the court.

In another case the guardian presented his report for consideration and approval by the court and same was checked by the attorney for the superintendent of the Osage Agency. The records show that a large number of United States bonds had been purchased.

The attorney for the superintendent of the Osage Agency checked over the assets purchased and found that a bond for \$500 was not accounted for and was not, in fact, on the report and called the attention of the court to the fact that the guardian was short a \$500 bond.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 13: In the matter of the guardianship of Cora Revard Downing.

In this case the guardian had been discharged for two years for the following provision in the final order that the guardian should settle with the incompetent ward. More than two years have gone by and the ward complains to the superintendent of the Osage Agency that the guardian had not settled with her, and after a long hearing and strenuous fight, a hearing was had upon an order of the county court which was made upon the objection of the superintendent of the Osage Agency. The court found that the guardian was in debt to the ward in the sum of over \$1,200.

This case was appealed to the district court where it is now awaiting disposition.
Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 14: In the matter of the guardianship of Susie Whipkey incompetent Osage allottee.

In this case a former guardian had resigned and another guardian appointed in his place. The Osage allottee made request upon the superintendent of the Osage Agency for the attorney representing him to make an investigation. Upon an audit of the report it was found that the guardian was indebted upon the face of the record in the sum of over \$10,000 to the ward.

Proper steps are being taken to compel the guardian to reimburse the ward.
Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 16: In the matter of the guardianship of Milton Holloway. Complaint was made by the allottee that he is not satisfied with his guardianship and requested that the superintendent of the Osage Agency come to Stillwater, Okla., and investigate his account.

The attorney for the superintendent of Osage Agency went to Stillwater and checked the accounts of the guardian and from the books showing money received and money paid out, the guardian was short in his account \$712.78.

Steps were being taken to remove the guardian, when the guardian entered into a verbal stipulation that he would resign at once.

In this case it was discovered that the guardian had purchased for the ward an expensive closed-in car, but had allowed a mortgage to be foreclosed against the ward's property, whereby the ward is now without a home and lost in the neighborhood of \$3,000 cash paid on the home place, which is easily worth \$5,000.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 17: In the matter of the estate of Charles Brave, incompetent Osage allottee.

In this case a petition was filed and order made on the same day to purchase a second-hand Cadillac automobile for a sum not in excess of \$3,300. No notice of any kind was served on the superintendent of the Osage Agency and the order was obtained while the county judge was under the influence of an opiate given to relieve pain on a sick bed.

The attorney for the superintendent of the Osage Agency filed a motion and served notice, upon the guardian of Charles Brave, that he would appear and contest the order, and the notice was served, and in proper time the cause came on for hearing, and the court sustained the motion of the Osage Agency to set aside and vacate the order.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 18: In the matter of the estate of Charles Drum, incompetent Osage allottee.

In this case, in checking over the report of the guardian, the report having been filed in court, the attorney for the superintendent of the Osage Agency discovered that a \$500 bond had been received by the guardian, but not reported in the report; in other words, the guardian was long \$500. In checking over the accounts of the report the discrepancy was discovered and the correction made in the report.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 19: In the matter of numerous estates of incompetent allottees. In a number of cases guardians for Osage incompetent allottees had been buying new cars and trading in the old cars for a consideration, in some cases from \$1,000 down to as low as \$250, they not giving credit to the ward in the report. In every case in which this occurs it has been contended that where the guardian has traded an automobile for a cash consideration that the same must be accounted for as cash actually received, and the full price of the car as paid for by the guardian, including the purchase price of the old car, should also be shown in the report.

Done at Pawhuska, Okla., this 5th day of December, 1923.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 2302: In the matter of the guardianship of Susie L. Hyatt. The guardian was appointed in this case January 11, 1923. The following fees have been collected, as shown by the orders and reports of the county court:

January, 1923: Guardian fees, \$1,000; attorney fees, \$500.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1463: In the matter of the guardianships of Wah ko sah moie, No. 322.

In this case the guardian was appointed in April, 1920.

The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
.....	\$600.00	\$300.00
.....	150.00
.....	600.00	400.00
.....	150.00
Jan. 10, 1920.....	300.00	150.00
Mar. 21, 1922.....	750.00	200.00
Jan. 8, 1921.....	750.00	400.00
	3,300.00	3,150.00
	1,100.00	483.33

which averages \$1,100 per year as guardianship fees and \$483.33 per year as attorney fees. Possibility of duplication of one item of \$750, but reports and orders are as above indicated.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1348: In the matter of the guardianship of Frank Lohowa, No. 683.

In this case the guardian was appointed January 29, 1919.

The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
Feb. 1, 1919, to Feb. 1, 1920.....	\$400.00	\$200.00
Jan. 1, 1921, to Dec. 31, 1921.....	300.00	150.00
Feb. 2, 1920, to Jan. 1, 1921.....	300.00	150.00
Jan. 1, 1922, to Jan. 1, 1923.....	350.00	150.00
	4,150.00	4,750.00
	337.50	187.50

which averages \$337.50 per year as guardianship fees and \$187.50 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memorandum No. 1103: In the matter of the guardianship of William McKinley, No. 379.

The guardian in this case was appointed October 1, 1917. Orders for allowance of guardianship and attorney fees can only be located for three years in the files of the county court, which are as follows:

	Guardian fees	Attorney fees
	\$600.00	\$300.00
	175.00	75.00
	500.00	250.00
	3) 1,275.00	3) 625.00
	425.00	208.33

which averages \$425 per year as guardianship fees and \$208.33 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1065: In the matter of the guardianship of Ralph Onhand, No. 582.

The guardian in this case was appointed in July, 1917. Orders for allowance of guardianship and attorney fees can only be located for four years in the files of the county court, which are as follows:

	Guardian fees	Attorney fees
	\$300.00	\$100.00
	750.00	50.00
	250.00	75.00
	250.00	125.00
	4) 1,550.00	50.00
	387.50	50.00
		4) 1,125.00
		281.25

which averages \$387.50 per year guardianship fees and \$281.25 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1,494: In the matter of the guardianship of Pah se to pah.

The guardian in this case was appointed July 29, 1919. The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
	\$600.00	\$375.00
	600.00	100.00
	400.00	50.00
	3) 1,600.00	300.00
	533.33	200.00
		3) 1,000.00
		333.33

which averages \$533.33 per year as guardianship fees and \$333.33 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 748: In the matter of the guardianship of Cap Strikeaxe.

The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
.....	\$500.00	\$300.00
.....	600.00	300.00
.....	700.00	350.00
.....	850.00	300.00
.....	800.00	300.00
.....	500.00	1,150.00
.....	50.00	300.00
	6)4,000.00	6)3,025.00
	666.66	504.16

which averages \$666.66 per year guardianship fees and \$504.16 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 473: In the matter of the guardianship of Charles Drum, incompetent.

The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
.....	\$300.00	\$100.00
.....	50.00	25.00
.....	350.00	25.00
.....	50.00	200.00
.....	35.00	35.00
.....	50.00	25.00
.....	300.00	200.00
	3)1,135.00	3)610.00
	378.33	203.33

which averages \$378.33 per year guardianship fees and \$203.33 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 970: In the matter of the guardianship of Red Corn (Sye gla in kah).

The guardian in this case was appointed in 1917. The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian-ship fees
.....	\$450.00
.....	225.00
.....	750.00
.....	125.00
.....	125.00
.....	350.00
	6)2,025.00
	337.50

which averages \$337.50 per year guardianship fees. Attorney fees not located.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1185: In the matter of the guardianship of Hope Coshehe. The guardian in this case was appointed in August, 1918. The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
Aug. 11, 1919, to Aug. 31, 1920.....	\$500.00	\$175.00
Aug. 31, 1920, to Aug. 31, 1921 (in this particular Paul N. Humphrey collected guardian and attorney fee).....		250.00
Aug. 31, 1921, to September, 1922 (this is not shown in 1923 report).....	500.00	250.00
Guardian fee report for Sept. 31, 1921, to Sept. 22, evidently for past year.....	600.00	
1918.....	50.00	25.00
Order Sept. 6, 1923.....	475.00	50.00
		200.00
	4)2,125.00	4)950.00
	531.25	237.50

which averages \$531.25 per year as guardianship fees and \$237.50 per year attorney fees.

J. M. HUMPHREYS, Probate Attorney.

Memoranda No. 1769: In the matter of the guardianship of Mary Elkins, incompetent.

In this case the guardian was appointed January 20, 1920. The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
June 12 to Dec. 30.....	\$1,250.00	\$400.00
Dec. 30 to Mar. 9.....	1,250.00	400.00
1923, 3½ months.....	1,250.00	600.00
June 12, 1920.....	500.00	200.00
	1,250.00	400.00
	1,000.00	
Jan. 31, 1923.....	250.00	600.00
1923.....	¹ 2,000.00	¹ 500.00
	3)9,000.00	3)3,000.00
	3,000.00	1,000.00

¹ Not in files.

which averages \$3,000 per year as guardianship fees and \$1,000 per year attorney fees.

J. M. HUMPHREYS, Probate Attorney.

Memoranda No. 1513: In the matter of the guardianship of Hun kah me, No. 655 et al., Lotah and Carl T. Kemoha.

The guardian in this case was appointed in November, 1919:

	Guardian fees	Attorney fees
Oct. 22, 1920, to Oct. 29, 1921.....	\$600.00	\$300.00
Dec. 6, 1920.....	200.00	100.00
Nov. 17, 1921.....	400.00	200.00
Dec. 18, 1920.....	600.00	350.00
Nov. —, 1921.....	200.00	200.00
Nov. 17, 1922.....	600.00	100.00
Nov. 14, 1922.....	600.00	300.00
Oct. 23, 1922.....	225.00	250.00
.....	600.00	100.00
.....	750.00	500.00
.....	750.00	500.00
.....	750.00	600.00
Oct. 23, 1922.....	600.00	300.00
Oct. 23, 1922, for 1922.....	600.00	200.00
	4)8, 275.00	4)4, 450.00
	2, 068.75	1, 112.50

The fees above were collected, as shown by order and reports of the county court. Two items above may be duplicates, however; different sums appear in report and order as indicated.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1735: In the matter of the guardianship of John P. Whitetail, No. 491.

The guardian in this case was appointed September 18, 1920. The following fees have been collected, as shown by the orders and report of the county court:

	Guardian fees	Attorney fees
Aug. 11, 1921, to Sept. 2, 1922.....	\$250.00	\$150.00
Aug. 15, 1921.....	300.00	150.00
Divorce fee, Mar. 11, 1921.....		50.00
.....		100.00
.....		250.00
.....		200.00
.....		150.00
Criminal.....		100.00
	2)550.00	2)1, 150.00
	275.00	575.00

which averages \$275 per year as guardianship fees and \$575 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 2314: In the matter of the guardianship of Re che sho shin kah, No. 681.

The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
Jan. 24, 1923.....	\$750	\$300

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1644: In the matter of the guardianship of Maggie Copperfield.

In this case the guardian was appointed May 28, 1920. The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
Aug. 13, 1923.....		\$500.00
July 15, 1921.....	\$500.00	150.00
Oct. 4, 1921.....		500.00
Jan. 31, 1921.....		100.00
June 1, 1921, to June 21, 1922.....	700.00	150.00
June 21, 1922, to May 18, 1923.....	750.00	250.00
Oct. 5, 1922.....		1,120.00
	3,150.00	3,270.00
	650.00	923.33

which averages \$650 per year as guardianship fees and \$923.33 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1526: In the matter of the guardianship of Roy Maker.

In this case the guardian was appointed October 23, 1919. The following fees have been collected, as shown by the orders and reports of the county court:

	Guardian fees	Attorney fees
Oct. 23, 1919, to Oct. 23, 1920.....	\$400.00	\$200.00
Oct. 14, 1921, to Oct. 15, 1922.....	400.00	200.00
Oct. 23, 1920, to Oct. 15, 1921.....	400.00	200.00
Oct. 14, 1922, to Oct. 15, 1923.....	400.00	200.00
	4,100.00	4,800.00
	400.00	200.00

which averages \$400 per year as guardianship fees and \$200 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1218: In the matter of the guardianship of Pah-se-to-pah, No. 335.

The guardian in this case was appointed May 14, 1918. The following fees have been collected, as shown by the orders and reports of the county court.

	Guardian fees	Attorney fees
Feb. 12, 1920.....	\$300	\$150
Apr. 5, 1921.....	400	150
June 3, 1921.....	400	150
May 31, 1922, to June 30, 1923.....	400	600
	5)2,600	5)1,050
	520	210

which averages \$520 per year as guardianship fees and \$210 per year attorney fees.

J. M. HUMPHREYS, *Probate Attorney.*

Memoranda No. 1462: In the matter of the guardianship of Larry Nolegs.

In this case the guardian was appointed May 6, 1919. The following fees have been collected, as shown by the order and reports of the county court:

	Guardian fees	Attorney fees
Jan. 24, 1921.....	\$400	\$200
	150	50
June, 1920.....	400	200

Record in this case incomplete.

J. M. HUMPHREYS, *Probate Attorney.*

Case No. 474: Joseph L. Rogers; Elmer Wheeler, guardian. Guardian discharged May 25, 1920. Attorney fees, \$370; guardianship fee, \$3,790.

Case No. 474: Ellen E. Rogers; Elmer Wheeler, guardian. Guardian appointed June 17, 1913. Attorney fees, \$770; guardianship fees, \$3,477.12.

Case No. 474: John Randolph Rogers; Elmer Wheeler, guardian. Guardian appointed June 17, 1913. Attorney fees, \$970; guardianship fees, \$2,484.29.

Case No. 474: Isabelle Rogers; Elmer Wheeler, guardian. Guardian appointed June 17, 1913. Attorney fees, \$770; guardianship fees, \$2,170.

Case No. 473: Wah-tsa-ki-he-kah (Charles Drum); Ed T. Kennedy, guardian; John McCool, guardian. Guardian first appointed April 5, 1913. Attorney fees, \$1,575; guardianships fees, \$2,750.

Case No. 522: Jesse Earl Jones; Robert C. Block appointed October 21, 1913; A. S. Wright appointed September 19, 1918. Attorney fees, \$575; court costs, \$116.85; guardian fees, \$500.

Case No. 523: Victoria Mathews; Lorenza Preston appointed October 30, 1913. Attorney fees, \$350; guardianship fees, \$150.

Case No. 936: Me-tsa-he-kha; W. C. Tucker, guardian. Guardian appointed June 4, 1917. Attorney fees, \$227.50; guardianship fees, \$1,400.

Case No. 936: Mo-ho-gla; W. C. Tucker, guardian. Guardian appointed June 4, 1917. Attorney fees, \$186; court costs, \$39.05; guardian fees, \$900.

Case No. 970: Wi-e-gla-in-kah; Jesse J. Worten, guardian. Guardian appointed March 24, 1917. Attorney fees, \$4,000; guardianship fees, \$2,225.

Case No. 766: Phillip Carson; George B. Mellott, guardian. Guardian appointed June 19, 1916. Attorney fees, \$1,244.50; court costs, \$250.35; guardian fees, \$1,509.

Case No. 857: Ruth Gibson; F. W. Farrar appointed November 29, 1916; E. S. Shidler appointed August 4, 1919. Attorney fees, \$2,950; court costs, \$80.55; guardian fees, \$3,174.

Case No. 707: Jules C. Pappin; E. E. Grinstead, guardian. Attorney fees, \$240; court costs, \$46; guardianship fees, \$1,250.

Case No. 748: O-sah-ke-sah (Cap Strikeaxe); R. M. Hunt appointed March 7, 1916; W. E. McGuire appointed April 21, 1917. Attorney fees, \$652.50; court costs, \$161.95; guardianship fees, \$1,800.

Case No. 858: Nah-me-tsa-he (Mrs. O. V. Pope); P. R. Williams appointed February 26, 1918; O. V. Pope appointed January 16, 1920. Attorney fees \$5,144.18; guardianship fees, \$1,250.

Case No. 861: Peter Clark; F. W. Files appointed April 24, 1919. Attorney fees \$860; guardianship fees, \$700.

Case No. 771: Dica Hildebrand; Charles A. Holden appointed January 20, 1919. Attorney fees, \$550; court costs, \$48; guardianship fees, \$610.

Case No. 726: Charles Chouteau; Izora Miller appointed September 16, 1918. Attorney fees, \$450; court costs, \$223.20; guardianship fees, \$700.

Mr. HUMPHREYS. I think if you will take these cases as they appear there, it will be a fair statement and a résumé of about what the cases will run. If it does not do that, Senator, I certainly don't know it. I want to be absolutely fair to everyone. They are selected not by myself entirely, but by the young men who works in the office by my direction. I have been too busy in other matters, and I can vouch for most of them, for I made most of them up myself. I do not know just what they will run. They will run pretty high, perhaps, and there is only one way that it can be arrived at, and that is to add them up and divide them by the number of cases. I verify the statements I make over my signature, but it need not go into the record unless you see fit.

Before I pass on to the amount of fees, I want to comment just a little bit on the act known as Senate bill 167, passed and signed by the governor of the State of Oklahoma relative to fees in Oklahoma. Heretofore in Osage County it has been the custom of the court to allow \$250 for a headright of the estate for the guardian, and one-half of that amount for the attorney fee per year, and I think with but few exceptions that has been adhered to pretty closely. I know it has since I have been there. I can not speak for what took place before, except on what we call extraordinary fees, and I want to speak of that a little later. The bill was prepared by Senator Frye and was intended to meet a condition that was very prevalent in the Five Civilized Tribes, and especially at Muskogee.

In the Five Civilized Tribes the lawyer himself or his guardian, if he has one, makes the contract for the drilling of wells, and the guardian collects the royalties. That is not true in Osage County. In Osage County the agency collects all of those royalties from the gas and oil. Under the terms of this bill, 3 per cent would be the amount collected and accounted for. Evidently the guardian would not be allowed under this section or division A of section 4, to charge 3 per cent of that, because it is already collected for him, and all he has to do is to receive it; but there is another portion of this bill under which I believe that it might be construed that he could collect, and that is subdivision C, section 4, which reads as follows:

For collecting all other items, 10 per centum of the amount collected and accounted for.

In other words, when an Indian last year had received \$12,400, if my interpretation of this is correct, and some courts might hold that, the guardian would receive \$1,240, simply for going up to the agency and getting a check.

The CHAIRMAN: Isn't that fixed as a maximum fee, and could not the court fix an allowance of less than that if he saw fit to do so?

Mr. HUMPHREYS. I think he could. We know sometimes the courts do drift toward the maximum. The maximum so far collected by any guardian in Osage County is \$300—that is, for one estate—the Mary Elkins estate, a very large estate. The guardian in that estate has been collecting \$250 a month, and the attorney, I think, about one-half, but that is shown in my report. That is the largest estate under guardianship in Osage County. This bill provides \$4,000 in any one year for the guardian. In other words, the guardian can receive more for one guardianship per year than the county judge gets or any official in the Osage Agency outside the superintendent. He is entitled under the law to five of those, and some of these men have five very large estates. If he should collect the full amount, and most of them are likely to collect all the law permits them to collect, and I do not blame them for it, they might get as high as \$10,000 a year for guardianship fees alone.

Section 5 of the act provides that attorney fees shall not exceed \$50 per month, where the value of the estate does not exceed the sum of \$50,000. An Osage estate is generally estimated all the way from \$100,000 to \$150,000. Isn't that correct, Mr. Humphrey?

Mr. HUMPHREY. Yes, sir; I think so.

Mr. HUMPHREYS. That is the general estimation as to what estates are valued at, by testimony given on the witness stand. If the estate exceeds \$500.00, then the attorneys get \$75 a month, where the value of the estate is between \$50,000 and \$75,000; and where an estate exceeds \$75,000 the court may allow a fee not to exceed \$100 per month. If an attorney has seven, eight or ten—and some of them have more than that—under this law, he would be permitted to collect those fees, and it would be a very lucrative practice. I am not offering any comments on it, but I am showing you what the agency seeks to have in this bill, not perhaps what some of the people think, just an arbitrary jurisdiction, but a jurisdiction over the full blood and those who are more than half blood, that they can to a certain extent limit expenditures. In other words, many an Indian and his wife have gone on the stand who have perhaps one or two children and who receive \$10,000 a year and testified under oath that they can not live on that amount of money.

I have those records here, and the question was asked before the House committee "Why haven't you got some of these reports here so we can examine them?" I have selected 50—that is, I did not select them; I just took them as they came into the office. I think these are the ones filed during the last week or two. When it was known there was a probability of my coming to Washington, I told the young man who works in the office to lay aside the reports that came in; so that it can not be claimed that these are selected cases, because these are the ones that came in hodgepodge, and if the committee wants some of these introduced into the record, I would like to introduce them just for the purpose of showing that the guardian expends way yonder in excess of any \$4,000 a year.

In other words, take the first one that comes to my hand on this pile, the Juanita Hunter case. She is a full blood, and so is her husband. They receive each \$4,000 a year, and the guardian testifies that he has been her guardian for a long time, he received during last year something over \$32,000 for this ward, he had on hand \$3,144.07 left over from last year, and the total amount received

and collected was \$35,199.08. He spent during last year the sum of \$34,609.98, leaving a balance due of \$598.10. The only expenditure—that is, the only amount of money that he has on hand drawing interest—is a certificate of deposit in the National Bank of Commerce for \$9,000. I offer that in evidence.

The CHAIRMAN. Was any part of that \$34,000 spent for property?

Mr. HUMPHREYS. Yes. There was a contest over a house bought in this case, where the agent took the position that the house was purchased at an exorbitant price. It is way out in the edge of town in a great big rock pile, and a very poorly constructed house, and the agency undertook to remove the guardian in the case for an unlawful expenditure of money—that is, not an unlawful expenditure but misuse of the funds. It appeared in the testimony in that case that the man who owned the property was in business and closely associated with this guardian, and took it in on a mortgage for \$7,000 just a month or so before it was turned over at the price of \$12,000. I think it was.

The CHAIRMAN. Just state the items that he claims to have put into property, as distinguished from anything else.

Mr. HUMPHREYS. It does not appear here, I think, Senator, but the item on November 18, for instance, was a balance on the house of \$2,087.22. The house was nearly all paid off during the last year, and on December 28 there was an item of \$5,500, and it says this was on an old debt, but it is not itemized here so you can tell.

The CHAIRMAN. Does that show how much was paid out by him for living expenses of his ward?

Mr. HUMPHREYS. It is not itemized; no, sir.

The CHAIRMAN. Does it show how much he spent in court costs and attorneys' fees and guardians' fees?

Mr. HUMPHREYS. I do not think he has it itemized in that way, but I will look and see. The \$9,000, of date October 8, last year, showed that up to that time he had not accumulated anything for his ward but the \$9,000 was out of the money collected last year, so that was part of the \$32,000 he paid out.

The CHAIRMAN. But he had paid a part of the \$34,000 for property, but you are not prepared to say how much it was?

Mr. HUMPHREYS. I am sure it was \$12,000.

The CHAIRMAN. It does not seem to me that these reports would be worth much unless you can show how much of that money had been invested in property values.

Mr. HUMPHREYS. It shows on its face, but I would have to sit down and analyze it. Do you want me to do that?

The CHAIRMAN. No; not now.

Mr. HUMPHREYS. I will pick out a few of these and put them in without any selection now. I will put in 10. These I will leave here for the committee and yourself, if you want them, Senator. There was considerable complaint in the House because we did not have these reports to look at.

(The reports are here printed in full, as follows:)

In the county court in and for Osage County, Okla. In the matter of the guardianship of Charles West, No. 79. H. N. Cook, guardian. No. 2249.

EXCEPTION TO REPORT

Comes now J. George Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter, which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore J. George Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage, ss:

To the judge of the county court of said county: The undersigned guardian of Charles West, No. 79, would respectfully submit to the court the following report of his acts and doings as such guardian from January 15, 1923, to January 22, 1924. H. N. Cook charges himself with the following, to wit:

1923		
Feb.	26. Check No. 13562, Geo. N. Wise.....	\$33, 365. 74
Mar.	24. Check No. 127046, March annuity.....	3, 554. 66
	30. Rentals, Earnest Bolton.....	120. 00
	30. Rentals, G. C. Bolton.....	140. 00
Apr.	12. Check trespass, Philip Reed.....	20. 00
	25. Check No. 15648, Citizens' National Bank, interest.....	23. 35
	25. Check No. 15647, lease, E. C. Smith.....	190. 00
June	19. Check No. 128339, June annuity.....	7, 404. 66
July	2. Check No. 412787, interest on bonds.....	24. 50
Sept.	24. Check No. 130682, annuity.....	7, 404. 66
Dec.	5. Rentals, A. W. Lohman.....	80. 00
	10. Lease No. 11729, E. C. Smith.....	190. 00
	15. Check No. 19841, Citizen's National Bank, interest.....	20. 12
	26. Rentals, check No. 21798, Henry Maden, jr.....	72. 02
	26. Check No. 432330, interest on bonds.....	24. 50
Jan.	3. Annuity, check No. 133023.....	3, 554. 66
	5. Interest on \$2,000 loan Eves Tallchief.....	70. 00

Guardian asks to be credited with the following sums, paid out as per receipts exhibited:

1923		
Jan.	7. Leander Dixon, taxes one-half Hlu an to me.....	\$164. 60
Feb.	5. First National Bank, Hominy, note.....	28. 50
	14. Chas. West, allowance.....	35. 00
	15. Chas. West, cash.....	20. 00
	23. Chas. West, allowance.....	30. 00
	23. Chas. West, allowance.....	20. 00
	24. Chas. West, cash.....	10. 00
	26. Chas. West, sight draft.....	20. 00
	27. Chas. West, sight draft.....	20. 00
	27. John Tiner, wood.....	5. 00
	27. Pawhuska Abstract & Title Co.....	265. 00
	28. Chas. West, allowance.....	30. 00

1923

Mar.	1. Chas. West, money advanced.....	\$355. 50
	1. Chas. West, allowance.....	20. 00
	1. Studebaker Motor Co., garage bill.....	133. 44
	1. Chas. West, allowance.....	20. 00
	3. R. D. Rochau, drug bill.....	131. 66
	3. Thos. Leahy, court costs.....	36. 60
	3. C. Gordon Clare, car protection.....	12. 50
	3. Earl Richardson, garage bill.....	5. 00
	5. Chas. West, allowance.....	84. 00
	6. G. & G. Store, old bill.....	219. 62
	6. G. & G. Store, old bill.....	174. 51
	8. Colombe & Ingraham, insurance.....	150. 00
	8. Chas. West, allowance.....	4. 00
	8. Chas. West, allowance.....	80. 00
	9. C. A. Johnson, expense to court.....	25. 00
	10. Lucas Garage, garage bill.....	45. 60
	15. Chas. West, allowance.....	42. 00
	19. Chas. West, allowance.....	42. 00
	21. Chas. West, allowance.....	42. 00
	26. Chas. West, allowance.....	84. 00
	26. Chas. West, cashier, check county treasurer.....	16. 25
	28. Porter Williams Dry Goods Co., account.....	90. 30
	28. Big Hill Trading Co., account.....	392. 05
	28. Reese & Barger, cash advances and merchandise.....	49. 50
	28. Hunsaker & Co., account.....	272. 70
	30. Cashier check, county treasurer.....	16. 16
	30. E. C. Smith, cash advance.....	73. 00
	30. Chas. West, allowance.....	10. 00
	30. Chas. West, allowance.....	125. 00
	30. Eves Tall Chief, loan on real estate.....	2, 000. 00
Apr.	2. Chas. West, allowance.....	50. 00
	9. Chas. West, allowance.....	42. 00
	9. Chas. West, allowance.....	42. 00
	10. Fairfax National Bank, note.....	2, 800. 00
	11. G. & G. Store, account.....	10. 00
	12. Dr. E. N. Lipe, medical services.....	3. 00
	12. Big Hill Trading Co., account.....	486. 85
	17. Chas. West, allowance.....	12. 00
	17. Chas. West, allowance.....	25. 00
	17. Richardson Motor Co., car repairs.....	7. 50
	17. Richardson Motor Co., garage bill.....	52. 18
	17. Chas. West, allowance.....	15. 00
	18. Chas. West, allowance.....	5. 00
	18. Dull & Whitcraft, garage bill.....	121. 80
	18. Frank Adams, tailor bill.....	20. 00
	18. Palace Trading Co., account.....	300. 54
	19. Chas. West, to Enid court.....	80. 00
	19. Fairfax Telephone Co., telephone bill.....	14. 40
	19. D. & K. Motor Co., car repairs.....	12. 00
	23. Burbank Garage, car repairs.....	15. 00
	23. Whitaker & Cassity, laundry bill.....	13. 12
	24. Chas. West, allowance.....	15. 00
	25. Chas. West, insurance premium.....	410. 20
	26. Chas. West, allowance.....	20. 00
	27. Chas. West, allowance.....	5. 00
	28. Chas. West, allowance.....	10. 00
	30. Chas. West, allowance.....	10. 00
May	1. Chas. West, allowance.....	20. 00
	2. Chas. West, allowance.....	5. 00
	3. Chas. West, allowance.....	5. 00
	5. Chas. West, allowance.....	5. 00
	5. Chas. West, allowance.....	40. 00
	7. Chas. West, allowance.....	5. 00
	9. Chas. West, allowance.....	10. 00
	11. Fairfax National Bank, old notes 1918.....	735. 95
	12. Chas. West, allowance.....	25. 00

1923		
May	14. Chas. West, allowance.....	\$10. 00
	16. Cashier check, county treasurer.....	41. 49
	16. Mrs. Chas. West.....	20. 00
	17. Frank Adams, balance on suit of clothes.....	25. 00
	18. Chas. West, draft.....	12. 00
	18. Victor Martin, cash.....	10. 00
	19. Bank for Liberty bonds.....	14, 856. 67
	19. Lynn Music Co., note.....	1, 033. 00
	20. D. & K. Motor Co., garage bill.....	59. 80
	22. Chas. West, allowance.....	20. 00
	22. Palace Trading Co., account.....	728. 75
	23. Chas. West, allowance.....	5. 00
	23. Chas. West, allowance.....	7. 50
	24. Cashier check to county treasurer, taxes.....	8. 22
	24. Chas. West, allowance.....	25. 00
	26. Quarles Hardware Co., one lawn mower.....	20. 00
	26. Porter Williams Co., 1 pair shoes.....	14. 95
	28. Chas. West, allowance.....	10. 00
	28. Cashier check, county treasurer.....	1. 16
	28. Cashier check, county treasurer.....	8. 42
	28. Chas. West, allowance.....	9. 00
	29. Quarles Hardware Co., account.....	59. 05
	31. Chas. West, allowance.....	10. 00
June	2. Chas. West, allowance.....	8. 27
	2. Studebaker Motor Co., garage bill.....	451. 68
	5. C. A. Johnson, attorney, court costs.....	35. 00
	6. Chas. West, allowance.....	15. 00
	6. Barnes-Elwell, cleaning and pressing.....	2. 25
	9. H. P. White, labor.....	50. 00
	9. Chas. West, allowance.....	5. 00
	10. Chas. West, allowance.....	10. 00
	11. Chas. West, allowance.....	5. 00
	12. Fairfax Electric Co., light bill.....	33. 10
	12. Southwestern Bell Telephone Co., telephone bill.....	5. 85
	12. Chas. West, allowance.....	5. 00
	13. Chas. West, allowance.....	5. 00
	13. Frank Adams, 2 pairs trousers.....	34. 00
	14. Chas. West, allowance.....	5. 00
	14. Johnson & Johnson.....	200. 00
	15. Chas. West, allowance.....	5. 00
	15. Lahman Ice Co., ice.....	8. 00
	16. Chas. West, allowance.....	5. 00
	16. Eugene Sawyers, 1 load wood.....	5. 00
	18. Chas. West, allowance.....	15. 00
	20. Chas. West, allowance.....	20. 00
	20. Spurgin Motor Co., garage bill.....	55. 08
	20. Pawhuska Abstract & Title Co.....	60. 00
	21. Colombe & Ingraham, insurance.....	40. 50
	23. Earl Gray, appraising land.....	45. 00
	23. Earnest Bolton, cash advanced.....	76. 00
	26. Hotel Pharmacy, drug bill.....	43. 30
	26. Chas. West, allowance.....	35. 00
July	28. Osage Boot Shop, dep. on shoes.....	15. 00
	1. Electric Plant, light bill.....	7. 10
	2. Chas. West, allowance.....	70. 00
	11. Chas. West, allowance.....	10. 00
	11. Chas. West, allowance.....	7. 00
	11. G. & G. Store, 1 hat.....	18. 50
	11. Alfred Drummond.....	1, 511. 47
	11. National Bank of Commerce.....	158. 75
	11. Pvt. Harris.....	1, 086. 25
	12. Chas. West, allowance.....	25. 00
	12. J. H. Ward, cash advanced.....	60. 00
	12. Ethel Mashburn Tall Chief, account.....	52. 00
	13. Fairfax Electric Co., wiring barn.....	14. 25
	13. Chas. West, allowance.....	100. 00

1923		
July	14.	Cashier's check, taxes..... \$16.64
	21.	Cashier's check, taxes..... 40.89
	24.	Chas. West, allowance..... 10.00
	24.	Frank Adams, tailor bill..... 10.00
	25.	Chas. West, allowance..... 15.00
	27.	Big Hill Trading Co., goods..... 22.75
	27.	Chas. West, allowance..... 10.00
	28.	Chas. West, allowance..... 5.00
	30.	Chas. West, allowance..... 5.00
	31.	Chas. West, allowance..... 60.00
	31.	Chas. West, cash..... 50.00
	31.	Mrs. J. O. Evans, sewing..... 7.00
Aug.	1.	Traders' National Bank, sight draft..... 125.00
	2.	Southwest Telephone Co., long-distance calls..... 6.60
	3.	Wheeler Garage, garage bill..... 42.60
	4.	Town of Fairfax, water bill..... 16.37
	7.	Fairfax Electric Light Co., light bill..... 9.00
	11.	Draft to Chas. West..... 50.00
	13.	Chas. West, allowance..... 20.00
	13.	Chas. West, allowance..... 10.00
	13.	Trader National Bank, sight draft..... 67.70
	14.	Charles West, allowance..... 100.00
	20.	Charles West, allowance..... 50.00
	21.	C. O. D. from post office..... 65.25
	24.	Traders National Bank, sight draft..... 23.50
	25.	Charles West, allowance..... 40.00
Sept.	31.	Mrs. Ed Roberts, wood..... 5.00
	1.	Electric light plant..... 7.75
	3.	Charles West, allowance..... 10.00
	4.	H. G. Burt, note..... 603.25
	5.	Charles West, allowance..... 3.00
	6.	Leander Dixon, taxes..... 30.51
	6.	Leander Dixon, taxes..... 16.23
	6.	Charles West, allowance..... 3.00
	7.	Charles West, allowance..... 3.00
	8.	Charles West, allowance..... 10.00
	8.	Charles West, allowance..... 3.00
	10.	Charles West, allowance..... 10.00
	12.	G. & G. Store, court order..... 94.95
	12.	Silver Moon Café, court order..... 46.10
Oct.	12.	Roy Cook, court order..... 60.00
	14.	T. J. Leahy, income-tax report..... 25.00
	14.	Collector of internal revenue..... 358.85
	14.	Cashier's check..... 20.00
	19.	Cashier's check..... 50.00
	26.	Charles West, allowance..... 25.00
	1.	Charles West, allowance..... 35.00
	3.	Porter Williams, account..... 28.25
	5.	Electric light plant, light bill..... 9.00
	5.	Gordon's Cash Grocery, bill..... 60.75
	6.	Fairfax Telephone Exchange, telephone bill..... 13.50
	9.	Charles West, allowance..... 35.00
	11.	Charles West, allowance..... 15.00
	13.	Charles West, allowance..... 3.00
Nov.	16.	Charles West, allowance..... 17.00
	19.	City clerk, water bill..... 8.77
	20.	Charles West, allowance..... 3.00
	20.	Charles West, allowance..... 7.00
	22.	Charles West, allowance..... 28.00
	22.	Charles West, allowance..... 70.00
	2.	H. S. Morgan, telephone bill..... 3.85
	5.	Bank for draft..... 10.00
	5.	Fairfax Electric Co., light bill..... 15.50
	5.	Allen & Morrison, plumbing bill..... 6.00
	6.	Bright Roddy, court order..... 66.00
	6.	Liberty Con., account..... 54.65

1923		
Nov.	7. Charles West, allowance	\$15. 00
	10. Barnes Cleaning Works, cleaning	32. 25
	12. Porter Williams, goods	12. 50
	13. Charles West, allowance	10. 00
	13. Leander Dixon, taxes	1, 064. 11
	14. Charles West, allowance	5. 00
	16. Charles West, allowance	10. 00
	22. Charles West, allowance	10. 00
	26. Charles West, allowance	10. 00
	29. Charles West, allowance	15. 00
Dec.	30. Shoun Bros., medical services	241. 00
	30. Bank Commerce Ralston, court order	234. 32
	1. Charles West, allowance	10. 00
	3. Telephone Co., telephone bill	2. 80
	3. Charles West, allowance	10. 00
	3. Charles West, allowance	11. 50
	6. Charles West, allowance	5. 00
	10. Charles West, allowance	10. 00
	10. Charles West, allowance	2. 00
	11. Fairfax Electric Co., light bill	19. 50
	12. Charles West, allowance	8. 00
	15. Charles West, allowance	20. 00
	18. Bonds	3, 011. 42
	12. Liberty National Bank, draft	10. 00
	20. Charles West, allowance	15. 00
	24. Charles West, allowance	15. 00
	28. Charles West, allowance	15. 00
	28. Liberty bonds	4, 938. 26
	29. C. Sawyers, wood	5. 00
1924	31. Charles West, allowance	15. 00
	31. Cashier's check, taxes	311. 48
1924		
Jan.	18. Bob Parker, expenses for grand jury	17. 92
	15. Charles West, allowance	20. 00
	14. Charles West, allowance	10. 00
	9. Charles West, allowance	5. 00
	9. Bob Parker, expenses	15. 49
	9. Charles West, allowance	5. 00
	9. George Barstrdal, wood	24. 00

All of which is respectfully submitted.

H. N. Cook, Guardian.

STATE OF OKLAHOMA,
County of Osage, ss:

H. N. Cook, guardian of Charles West, No. 79, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said minor from January 15, 1923, to the 22d day of January, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said minor, on hand the 22d day of January, 1924.

H. N. Cook, Guardian.

Subscribed and sworn to before me this 24th day of January, A. D. 1924.

GOODLOE TOM KENLEY,
Notary Public.

In the county court in and for Osage County, Okla. In the matter of the guardianship of Frank Riddle; E. C. Snyder, guardian. No. 2118.

EXCEPTION TO REPORT

Comes now J. Geo. Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter, which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed, as required by law, showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore J. Geo. Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage, ss:

To the judge of the county court of said county: The undersigned, guardian of Frank Riddle, incompetent, would respectfully submit to the court the following report of his acts and doings as such guardian from February 27, 1923, to February 27, 1924. Guardian charges himself with the following, to wit:

1923			
Feb.	27.	Balance on hand	\$189.69
Mar.	24.	Annuity	1,000.00
Apr.	12.	Money borrowed	490.32
June	23.	Annuity	4,000.00
July	16.	Cattle	334.00
Sept.	20.	Annuity	4,000.00
Dec.	11.	Rent of garage	10.00
	12.	Rent on garage	10.00
	18.	Annuity	1,900.00

Total amount of moneys received or collected... 12,834.01

Guardian asks to be credited with the following sums, paid out as per receipts exhibited:

1923			
Feb.	26.	Leona Riddle, allowance	\$10.00
Mar.	2.	Leona Riddle, allowance	10.00
	2.	Frank Riddle, allowance	10.00
	4.	Leona Riddle, allowance	10.00
	5.	Frank Riddle, allowance	10.00
	7.	Frank Riddle, allowance	15.00
	10.	Frank Riddle, allowance	25.00
	12.	Leona Riddle, allowance	10.00
	14.	Frank Riddle, allowance	15.00
	14.	First National Bank, license on Dodge truck	12.00
	17.	Leona Riddle, allowance	10.00
	19.	Leona Riddle, allowance	20.00
	20.	Frank Riddle, allowance	25.00
	21.	Citizens' National Bank, note	300.00
	21.	Service garage, repairs on car	30.75
	21.	Benson Bros., lumber for farm	46.60
	21.	Ruble Motor Co., second-hand car for farm	100.00
	21.	The Vogue Shop, ladies' and children's clothes	264.00
	21.	Constantine Oil Corporation, statement rendered	92.56
	21.	Pawhuska Furniture Co., allowance	35.00
	21.	Oklahoma Bond & Investment Co., payment Jewett sedan	267.30
	21.	Citizens' Trust Co., bond	26.66
	22.	Leona Riddle, allowance	10.00
	24.	Leona Riddle, allowance	10.00
	24.	Frank Riddle, allowance	25.00
	24.	B. & L. Tire Co., account in full	66.40
	26.	Frank Riddle, allowance	20.00
	26.	Osage Mercantile Co., statement rendered	55.10
	26.	Futtermans, ladies' ready-to-wear garments	97.75
	26.	Frank Riddle, allowance	10.00

1923		
Mar.	26. Robinson & McDonald, men's clothes.....	\$63. 25
	26. Stephenson & Givens, statement rendered.....	117. 25
	27. C. H. Coddling, interest on mortgage on land.....	7. 00
	27. Leona Riddle, allowance.....	10. 00
	30. American National Bank, interest on old note.....	5. 50
Apr.	31. Leona Riddle, allowance.....	20. 00
	2. Frank Riddle, seed for farm.....	50. 00
	2. E. C. Snyder, guardian, one-half guardian fee for 1922.....	150. 00
	5. Frank Riddle, corn seed.....	15. 00
	6. Leona Riddle, allowance.....	10. 00
	9. Frank Riddle, spring for car.....	10. 00
	12. Frank Riddle, allowance.....	15. 00
	14. Leona Riddle, allowance.....	20. 00
	17. Leona Riddle, trip to Kansas City.....	60. 00
	17. Frank Riddle, allowance.....	10. 00
	18. Frank Riddle, allowance.....	20. 00
	21. Leona Riddle, allowance.....	10. 00
	21. Frank Riddle, allowance.....	10. 00
	23. Frank Riddle, allowance.....	15. 00
	23. Leona Riddle, allowance.....	10. 00
	26. Frank Riddle, allowance.....	5. 00
	28. Frank Riddle, allowance.....	10. 00
	28. Leona Riddle, allowance.....	10. 00
	30. Frank Riddle, allowance.....	10. 00
	30. Leona Riddle, allowance.....	50. 00
May	2. Frank Riddle, gas, electricity, and water.....	6. 50
	3. Frank Riddle, freight on cottonseed.....	15. 00
	3. E. C. Snyder, guardian, part of guardian fees.....	50. 00
	7. Frank Riddle, allowance.....	20. 00
	9. Leona Riddle, allowance.....	15. 00
	15. Frank Riddle, allowance.....	21. 39
	18. Leona Riddle, allowance.....	10. 00
	21. Frank Riddle, allowance.....	10. 00
	22. Leona Riddle, allowance.....	5. 00
	22. Frank Riddle, allowance.....	10. 00
	25. Leona Riddle, allowance.....	10. 00
	26. Frank Riddle, allowance.....	40. 00
	8. Frank Riddle, allowance.....	15. 00
	10. City clerk, water and lights.....	2. 30
June	10. Pawhuska Gas Co., May gas bill.....	1. 14
	19. Frank Riddle, allowance.....	10. 00
	20. Leona Riddle, allowance out of \$1,000 quarterly.....	300. 00
	20. The Vogue Shop, ladies' and children's clothes.....	279. 35
	20. Constantine Oil Corporation, gas, car, and tractor.....	182. 57
	20. Stephenson & Givens, groceries.....	412. 25
	20. Robinson & McDonald, men's clothes.....	65. 75
	20. Frank Riddle, 2 weeks' allowance, \$1,000 quarterly.....	80. 00
	21. S. P. Boles, old account, well-drilling, farm.....	70. 00
	21. National Bond & Investment Co., third payment on sedan.....	267. 30
	21. A. M. Widdows, attorney fees.....	150. 00
	21. E. C. Snyder, guardian, balance guardian, fees for 1922.....	100. 00
	22. City National Bank, payment on note and interest.....	256. 46
	22. Cash, camping bed and tent.....	65. 00
July	24. Widdows & McCoy, part payment of retainer.....	125. 00
	24. B. F. Parsons, Homesteaders' Life Insurance.....	295. 80
	24. Frank Riddle, allowance.....	77. 35
	26. Doctor Talbutt, one half of account.....	27. 00
	26. Osage Merchandise Co., account.....	172. 05
	26. C. W. Stevens, interest and commission, notes on farm.....	140. 00
	26. B. & H. Tire Co., one-half of account.....	51. 10
	26. Hominy Trading Co., part payment of account.....	150. 00
	27. Jack Ruble, one-half of account.....	84. 00
	27. American National Bank, interest.....	1. 00
	27. Futtermans Store, one-half of account.....	86. 60
	4. Frank Riddle, allowance.....	10. 00
	9. Leona Riddle, allowance.....	40. 00

1923		
July	12.	Cash to wire to Elk City, Okla. \$40.00
	16.	Leona Riddle, allowance 40.00
	21.	Frank Riddle, allowance 40.00
	22.	Frank Riddle, allowance 10.00
	24.	Leona Riddle, allowance 10.00
	24.	Leona Riddle, allowance 30.00
	25.	Frank Riddle, allowance 20.00
	27.	Leona Riddle, allowance 40.00
	28.	S. P. Boles, old drilling account in full 35.00
	30.	Frank Riddle, allowance 10.00
Aug.	31.	Leona Riddle, allowance 10.00
	5.	Frank Riddle, allowance 10.00
	5.	Leona Riddle, allowance 10.00
	5.	Leona Riddle, allowance 30.00
	6.	Leona Riddle, allowance 10.00
	7.	Cash, for police court money bond 50.00
	10.	Frank Riddle, allowance 40.00
	12.	Leona Riddle, allowance 20.00
	15.	Leona Riddle, allowance 10.00
	15.	Frank Riddle, allowance 10.00
	17.	Leona Riddle, allowance 10.00
	20.	Frank Riddle, allowance 10.00
	22.	Frank Riddle, allowance 20.00
	24.	Leona Riddle, allowance 10.00
	25.	Leona Riddle, allowance 20.00
	27.	Frank Riddle, allowance 15.00
	27.	Leona Riddle, allowance 15.00
	31.	Leona Riddle, allowance 20.00
	3.	Leona Riddle, allowance 10.00
	8.	Citizens' National Bank, to take up draft drawn by Frank at Pawnee 25.00
Sept.	10.	Frank Riddle, allowance 15.00
	12.	Leona Riddle, allowance 10.00
	12.	Frank Riddle, allowance 40.00
	15.	United States Internal Revenue collector, income tax 219.39
	19.	Leona Riddle, allowance 20.00
	20.	National Bond & Investment Co., payment on car 267.30
	21.	Osage Motor Co., account in full 25.00
	21.	Hominy Trading Co., account in full 196.00
	21.	Dr. J. B. Talbutt, dental work 27.00
	21.	Futtermans, account in full 81.10
	21.	Pawhuska Furniture Co., account in full 35.00
	21.	The Vogue Shop, account in full 62.50
	21.	Dr. G. E. Rolland, dental work 2.00
	21.	Benson Bros. L. Co., account in full 81.11
	21.	County treasurer, tax on land and personal property 536.79
	21.	R. W. Burr, interest 50.00
	21.	Citizens National Bank, note 250.00
	21.	Leona Riddle, allowance 15.00
	21.	Freeze tire station, tires and tubes 120.90
	21.	Widdows & McCoy, second payment on retainer 125.00
	21.	C. A. Cook, sheriff, personal taxes, 1922 22.32
	21.	C. A. Cook, sheriff, personal taxes, 1921 20.95
	22.	E. H. Ryan, interest 136.76
	24.	B. & H. Tire Co., account in full 51.00
	24.	Robinson & McDonald, account in full 69.50
	24.	Ruble Motor Co., account in full 84.00
	24.	Leona Riddle, allowance 35.00
	24.	Citizens National Bank, draft C. H. Coddling, land mortgage 247.94
	28.	Leona Riddle, allowance 15.00
	2.	Leona Riddle, allowance 35.00
Oct.	3.	Cash, expenses to Elk City and Sayre, Okla. 100.00
	6.	Cash, expenses on Elk City trip 100.00
	10.	Leona Riddle, allowance 35.00
	11.	E. C. Snyder, expenses second trip to Sayre and Elk City 100.00
	20.	Frank Riddle, allowance 10.00

1923		
Oct.	25. Ford garage, payment on car.....	\$28. 70
	27. Frank Riddle, allowance.....	20. 00
	30. Mrs. L. A. Carter, account in full.....	11. 50
	31. Frank Riddle, allowance.....	10. 00
	31. Leona Riddle, allowance.....	15. 00
Nov.	1. Frank Riddle, trip to Elk City.....	50. 00
	6. Frank Riddle, allowance.....	20. 00
	9. Cash, costs paid in criminal case at Sayre.....	20. 85
	9. E. C. Snyder, balance expenses to Elk City.....	32. 37
	9. Telephone Co., long distance, re case at Sayre.....	12. 46
	10. Widdows & McCoy, making income-tax report.....	25. 00
	10. Frank Riddle, allowance.....	10. 00
	12. Frank Riddle, allowance.....	20. 00
	14. Ford Motor Car Co., monthly payment.....	28. 70
	14. Hudson-Essex Co., court order to pay on car.....	300. 00
	16. Frank Riddle, allowance.....	10. 00
	22. Frank Riddle, allowance.....	10. 00
	23. E. C. Snyder, guardian, expenses to Sayre.....	141. 89
	23. Frank Riddle, expenses to Sayre after car.....	50. 00
	23. Widdows & McCoy, expenses Oklahoma City.....	23. 00
	30. Frank Riddle, allowance.....	20. 00
Dec.	3. Widdows & McCoy, expenses Oklahoma City.....	10. 00
	3. Clerk county court, court costs No. 2118.....	13. 30
	8. Frank Riddle, allowance.....	20. 00
	12. Frank Riddle, money received for rent on garage.....	20. 00
	14. Ford Motor Sales Co., court order.....	28. 70
	14. Frank Riddle, allowance.....	50. 00
	18. Fattermans, account.....	32. 00
	18. Robinson & McDonald, account.....	59. 00
	18. Clayton Smith, insurance on auto.....	42. 75
	18. Leahy-Macdonald, court order, Sayre.....	250. 00
	18. Widdows & McCoy, Riddle v. Riddle.....	250. 00
	18. Widdows & McCoy, court order, Sayre.....	250. 00
	19. Frank Riddle, allowance.....	50. 00
	19. Osage Mercantile Co., account.....	151. 65
	19. Conway's grocery, account.....	87. 65
	20. Hudson-Essex Co., court order.....	300. 00
	20. C. G. Sego & Co., court order.....	44. 25
	21. Frank Riddle, allowance.....	25. 00
	21. The Vogue Shop, ladies' ready to wear.....	225. 00
	24. Frank Riddle, allowance.....	50. 00
1924		
Jan.	2. Frank Riddle, allowance.....	20. 00
	8. Frank Riddle, allowance.....	12. 95
	14. Ford Motor Sales Co., court order.....	28. 70
Total.....		12, 834. 01

RECAPITULATION

Total amount received.....	12, 834. 01
Total amount paid out.....	12, 834. 01

All of which is respectfully submitted.

E. C. SNYDER, *Guardian*.

STATE OF OKLAHOMA,
County of Osage, ss:

E. C. Snyder, guardian of Frank Riddle, incompetent, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said incompetent, from February 27, 1923, to the 27th day of February, A. D., 1924, and of all moneys, notes, bonds, accounts and evidences of indebtedness, composing the personal estate of said incompetent, on hand the 27th day of February, 1924.

E. C. SNYDER, *Guardian*.

Subscribed and sworn to before me, this 3d day of March, A. D. 1924,

BERTHA PROPHET, *Notary Public*.

My commission expires December 3, 1927.

In the County Court in and for Osage County, Okla. In the matter of the guardianship of Jennie Strike-Axe Lynch, No. 608; L. R. Stith, guardian: No. 2431

EXCEPTION TO REPORT

Comes now J. Geo. Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore, J. Geo. Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage, ss:

To the judge of the county court of said county: The undersigned, guardian of Jennie Strike-Axe Lynch, Osage allottee 608, would respectfully submit to the court the following report of his acts and doings as such guardian from July 26, 1923, to January 22, A. D. 1924, charges himself with the following, to wit:

1923		
July	30. Check from agency.....	\$8, 763. 59
Oct.	1. Check from agency.....	4, 687. 39
Nov.	9. Lease No. 11389.....	250. 00
	9. Interest.....	91. 46
Dec.	4. Inherited.....	1, 670. 08
	21. Annuity.....	2, 237. 40
	31. Certificate of deposit.....	2, 000. 00
	31. Certificate of deposit.....	8, 000. 00
	31. Interest on certificate of deposit.....	75. 00

Total amount of moneys received or collected..... 27, 774. 92

Guardian asks to be credited with the following sums, paid out as per receipts exhibited:

1923		
July	29. Jennie Lynch, household expenses.....	\$35. 00
Aug.	25. Jennie Lynch, household expenses.....	25. 00
	25. B. I. Fahey, payment on court order dated August 7, 1923.....	20. 00
	29. Jennie Lynch, household expenses.....	15. 00
	27. Jennie Lynch, spending money.....	10. 00
	2. Jennie Lynch, household expenses.....	25. 00
	4. Jennie Lynch, household expenses.....	5. 00
	6. Stephenson & Givens, groceries in full for July, 1923.....	83. 35
	7. D. B. Horsley, living expenses.....	25. 00
	8. Orlando Kenworthy, rent of house, July, 1923.....	65. 00
	8. Jennie Lynch, household expenses.....	15. 00
	10. City of Pawhuska, light and water.....	15. 10
	10. Pawhuska Oil & Gas, gas.....	1. 52
	13. Jennie Lynch, household expenses.....	20. 00
	20. Jennie Lynch, household expenses.....	25. 00
	29. S. W. Bell Telephone Co., rental and toll.....	7. 05
Sept.	1. Jennie Lynch, household expenses.....	15. 00
	1. Jennie Lynch, household expenses.....	10. 00
	4. Jennie Lynch, household expenses.....	20. 00
	7. Jennie Lynch, household expenses.....	10. 00

1923		
Sept.	10. Jennie Lynch, household expenses	\$35. 00
	10. Orlando Kentworthy, rent for house, August	65. 00
	10. S. W. Bell Telephone Co., rental for September	1. 75
	10. City of Pawhuska, water and electricity	11. 95
	14. Collector of internal revenue, tax for 1922	208. 60
	14. Jennie Lynch, household expenses	10. 00
	14. T. J. Leahy, making income tax for 1922	30. 00
	17. Nancy Fisher, household services	10. 00
	17. Jennie Lynch, household expenses	10. 00
	18. Jennie Lynch, household expenses	5. 00
	21. Jennie Lynch, household expenses	10. 00
	24. Nancy Fisher, household services	10. 00
	24. Jennie Lynch, household expenses	10. 00
Oct.	1. Jennie Lynch, household expenses	20. 00
	1. Liberty National Bank, time certificate	8, 000. 00
	2. Liberty National Bank, time certificate	2, 000. 00
	2. Liberty National Bank, lock box rent	3. 00
	2. Osage Mercantile, groceries, August and September	203. 75
Sept.	29. Jennie Lynch, household expenses	20. 00
Oct.	1. Thos. Leahy, costs in case No. 2431	19. 65
	1. Nancy Fisher, household services	10. 00
	8. Nancy Fisher, household services	10. 00
	6. Jennie Lynch, household expenses	10. 00
	8. Jennie Lynch, household expenses	15. 00
	18. S. W. Bell Telephone Co., October rental and toll	2. 44
	10. Jennie Lynch, household expenses	5. 00
	10. Pawhuska Oil & Gas, for gas	2. 00
	10. City of Pawhuska, light and water	10. 20
	13. Jennie Lynch, household expenses	10. 00
	18. Nancy Fisher, household services	10. 00
	18. Jennie Lynch, ice, milk, washing, etc.	15. 00
	22. Jennie Lynch, household expenses	15. 00
	22. Nancy Fisher, household services	10. 00
	25. Jennie Lynch, household expenses	20. 00
	24. J. P. Martin Co., clothing and shoes	20. 10
	27. Jennie Lynch, household expenses	15. 00
	29. Jennie Lynch, household expenses	10. 00
	29. Nancy Fisher, household services	10. 00
	27. J. F. McSpadden Furniture Co., 2 rugs, \$25 each	50. 00
	30. Jennie Lynch, household expenses	15. 00
	31. Jennie Lynch, household expenses, dishes	10. 00
	30. Dora Drury, for sewing	4. 00
	29. Dora Drury, for sewing	5. 00
Nov.	5. Nancy Fisher, household services	10. 00
	5. Jennie Lynch, household expenses	15. 00
	11. Osage Mercantile Co., groceries and clothing	506. 15
	6. Orlando Kenworthy, 2 months' rent	130. 00
	6. Jennie Lynch, household expenses	15. 00
	7. Jennie Lynch, household expenses, washing, ironing, etc.	5. 00
	7. City of Pawhuska, light and water	8. 10
	10. S. W. Bell Telephone Co., rental and toll	13. 35
	10. Pawhuska Oil & Gas, gas for October	4. 18
	10. Jennie Lynch, household expenses	15. 00
	11. Aetna Casualty & Surety Co., guardian's bond for 1 year, July 26, 1923, to July 26, 1924, case 2431	90. 00
	12. Nancy Fisher, household services	10. 00
	12. Jennie Lynch, household expenses	15. 00
	15. Jennie Lynch, household expenses	15. 00
	16. Mrs. Dora Drury, sewing	11. 65
	16. D. B. Horsley, partial attorney fee	103. 60
	17. Liberty National Bank, interest on notes as court order	22. 54
	17. McDowell & Castator Music Co., payment on court order	25. 00
	17. Paul's Women's Apparel, dress	47. 50
	20. Nancy Fisher, household services	10. 00
	21. Jennie Lynch, household expenses	15. 00

1923		
Nov.	23. W. A. Vrummett, repairing player piano	\$15.00
	23. Jennie Lynch, household expenses	15.00
	26. Jennie Lynch, household expenses	15.00
	27. Jennie Lynch, household expenses	10.00
	7. B. I. Fahey, balance on order	101.15
	26. Nancy Fisher, household services	10.00
	28. Jennie Lynch, household expenses	5.00
	30. Jennie Lynch, household expenses	5.00
Dec.	1. Mrs. Dora Drury, sewing	12.00
	1. Mrs. J. M. Worten, statement, Sept. 11, Oct. 20, Nov. 5	49.50
	3. Jennie Lynch, household expenses	10.00
	3. Nancy Fisher, services to date	10.00
	4. Jennie Lynch, household expense	15.00
	4. Smith's Racket Store, pans, dishes, etc.	11.30
	6. Jennie Lynch, household expenses	10.00
	10. Billie Snow, household services	10.00
	10. Jennie Lynch, household expenses	10.00
	10. Pawhuska Oil & Gas, for gas	10.26
	10. City of Pawhuska, light and water	10.10
	13. Osage Mercantile Co., account, November, 1923	177.60
	14. Jennie Lynch, household expenses	10.00
	14. Southwestern Bell Telephone Co., rent and toll	7.14
	15. Mrs. B. F. Mason, tuberculosis seals	10.00
	17. Billie Snow, household services	10.00
	17. Jennie Lynch, household expenses	15.00
	18. Fitterman's, statement dated Dec. 17, 1923	55.00
	18. Jennie Lynch, household expenses	15.00
	19. Jennie Lynch, household expenses	5.00
	20. Mary Bruno, court order, Dec. 23, 1923	25.25
	20. McDowell & Castator Music Co., payment on court order	25.00
	20. The Lovelace Drug, account rendered Dec. 18, 1923	15.75
	20. J. P. Martin & Co., statement Dec. 19, 1923	14.39
	21. Olin Lewis, 60-pound hog at 12 cents	7.20
	21. Ella May Bettis, merchandise from Manhattan Produce Co.	13.50
	22. Jennie Lynch, household expenses	5.00
	24. Billie Snow, household services	10.00
	24. Jennie Lynch, Christmas shopping	15.00
	24. B. L. Witt, Christmas tree	4.50
	26. Household expenses, Jennie Lynch	15.00
	27. Jennie Lynch, household expenses	10.00
	28. F. S. Kelley Furniture Co., child's bed	25.00
	29. Jennie Lynch, household expenses	10.00
	24. Orlands Kenworthy, December rent	65.00
	24. Orlando Kenworthy, November rent	65.00
	29. Leander Dixon Co., treasurer	95.90
	31. Billie Snow, household services	10.00
	31. Jennie Lynch, household expenses	10.00
	31. F. S. Lane, rent on sewing machine	5.00
	31. Liberty National Bank, war savings securities	10,000.00
	31. Liberty National Bank, war savings securities	2,000.00
	31. Earl Kilbie, payment court order, Dec. 21, 1923	76.00
	31. Thomas Leahy Co., clerk, court costs, and appraisal	56.70
1924		
Jan.	3. Smith's Racket Store, statement Dec. 29, 1923	19.48
	4. Jennie Lynch, household expenses	10.00
	5. Heninger Men's Shop, suit and hat	49.50
	5. Billie Snow, household services	10.00
	7. Jennie Lynch, household expenses	15.00
	10. City of Pawhuska, light and water	1.25
	10. Pawhuska Oil & Gas, gas	12.29
	11. Jennie Lynch, household expenses	5.00
	14. Osage Mercantile Co., statement Jan. 1, 1924	340.10
	14. Southwestern Bell Telephone Co., rent and toll	1.75
	14. Billie Snow, household services	10.00
	16. Liberty National Bank, loan	102.50

1924		
Jan.	16. Dora Drury, sewing.....	\$6. 50
	16. Jennie Lynch, household expenses.....	10. 00
	14. Jennie Lynch, household expenses.....	15. 00
	18. Jennie Lynch, household expenses.....	5. 00
	19. Billie Snow, household expenses.....	10. 00
	21. Jennie Lynch, household expenses.....	15. 00

RECAPITULATION

Total amount received.....	27, 774. 92
Total amount paid out.....	26, 354. 54

Balance due..... 1, 420. 38

The following is an itemized account of all notes, bonds, accounts, and evidences of indebtedness, which are herewith presented for inspection, composing the personal estate of my said wards:

United States bonds, 4 per cent.....	\$10, 000
United States bond, 4 per cent.....	2, 000

All of which is respectfully submitted.

L. R. STITH, *Guardian.*

STATE OF OKLAHOMA,
County of Osage, ss.:

L. R. Stith, guardian of Jennie Strike-Axe Lynch, Osage allottee No. 608, an incompetent, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said incompetent from July 26, 1923, to the 22d day of January, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said incompetent, on hand the 22d day of January, 1924.

L. R. STITH, *Guardian.*

Subscribed and sworn to before me, this 6th day of March, A. D. 1924.

[SEAL.]

FRED I. GADDIE,
Notary Public.

My commission expires February 16, 1926.

In the county court in and for Osage County, Okla. In the matter of the guardianship of Ne-kah-she-he, incompetent Osage allottee; L. M. Colville, guardian. No. 1578. Exception to report.

Comes now J. George Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter, which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore, J. George Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEORGE WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage, ss.:

To the judge of the county court of said county: The undersigned, guardian of Ne-kah-she-he, incompetent Osage allottee No. 149, would respectfully sub-

mit to the court the following report of his acts and doings as such guardian from February 23, 1923, to February 23, A. D. 1924. Guardian charges himself with the following, to wit:

1923			
Feb.	23.	Balance on hand.....	\$4,782.17
Feb.	27.	Rent.....	275.00
Mar.	21.	Annuity.....	4,080.25
May	11.	Deposit.....	15,164.06
June	—.	Annuity.....	8,560.25
July	18.	Building and loan division.....	30.00
July	18.	Rent.....	80.00
Oct.	2.	September annuity.....	8,560.25
Dec.	21.	Annuity.....	4,080.25
1924			
Jan.	3.	Rent.....	275.00
Jan.	3.	National building and loan division.....	30.00
Jan.	29.	Deposit.....	21.00
Total amount of moneys received or collected.....			45,938.23

Guardian asks to be credited with the following sums paid out, as per receipts exhibited:

COSTS OF GUARDIANSHIP

1924			
Feb.	26.	L. M. Colville.....	\$400.00
Mar.	17.	L. M. Colville.....	350.00
Apr.	28.	Citizens Trust Co., premium on bond.....	60.00
Dec.	26.	Citizens Trust Co., premium on bond.....	315.00
			1,125.00

INSURANCE

June	18.	A. C. Seely, premium on insurance.....	42.50
Feb.	5.	R. S. Tolson, premium on insurance, household.....	25.50
			68.00

TAXES

1922			
Dec.	28.	County treasurer, 1922 taxes in full.....	157.06
1923			
May	19.	County treasurer, taxes on inherited land.....	11.43
Mar.	23.	County treasurer, taxes.....	181.43
Sept.	20.	T. J. Leahy, preparing 1922 income tax.....	52.20
	20.	Collector internal revenue, income tax.....	892.82
Oct.	8.	County treasurer, taxes 1918-1922.....	13.44
Dec.	28.	County treasurer, tax on certificate of deposit.....	40.00
1924			
Jan.	10.	County treasurer, Jan. 10 taxes 1923.....	20.86
	28.	County treasurer, personal tax 1923.....	343.60
			1,712.84

DOCTOR BILLS AND DRUGS

May	9.	L. Jay Briscoe, drugs.....	30.75
June	19.	Dr. L. C. Williams.....	66.00
	19.	Dr. Roscoe Walker.....	11.00
Aug.	8.	L. Jay Briscoe, drugs.....	10.35
	9.	Dr. R. J. Barrett.....	15.00
Oct.	2.	Dr. T. P. Govan.....	72.00
Nov.	7.	J. A. Puryear, drugs.....	3.80
Dec.	17.	Drs. Roland & Rippey.....	3.00
Jan.	28.	Dr. L. C. Williams.....	28.00
Feb.	9.	L. J. Briscoe, drugs.....	6.75
			246.65

INVESTMENTS

Mar.	23.	National Building & Loan Association, installment on stock	\$200. 00
Apr.	25.	National Building & Loan Association, installment on stock	100. 00
May	18.	National Building & Loan Association, installment on stock	100. 00
June	19.	National Building & Loan Association, installment on stock	100. 00
July	9.	National Building & Loan Association, installment on stock	100. 00
Sept.	8.	National Building & Loan Association, installment on stock	200. 00
Oct.	30.	National Building & Loan Association, installment on stock	100. 00
Nov.	27.	National Building & Loan Association, installment on stock	100. 00
Dec.	20.	National Building & Loan Association, installment on stock	400. 00
	27.	Citizens National Bank, certified deposit	10, 000. 00
	27.	First National Bank, Pawhuska, United States Treasury certificates	20, 000. 00
	27.	First National Bank, earned interest on United States certificates	260. 84
			<hr/> 31, 660. 84 <hr/>

DONATIONS

Dec.	10.	Osage County Health Association	10. 00
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ALLOWANCE

Feb.	17.	Ne-kah-she-he	\$10. 00
	24.	Ne-kah-she-he	10. 00
	26.	Ne-kah-she-he	25. 00
Mar.	3.	Ne-kah-she-he	35. 00
	12.	Ne-kah-she-he	25. 00
	17.	Ne-kah-she-he	10. 00
	19.	Ne-kah-she-he	25. 00
	23.	Ne-kah-she-he	50. 00
	26.	Ne-kah-she-he	25. 00
	28.	Ne-kah-she-he	10. 00
Apr.	2.	Ne-kah-she-he	40. 00
	4.	Ne-kah-she-he	25. 00
	9.	Ne-kah-she-he	25. 00
	14.	Ne-kah-she-he	30. 00
	16.	Ne-kah-she-he	10. 00
	19.	Ne-kah-she-he	10. 00
	21.	Ne-kah-she-he	25. 00
	24.	Ne-kah-she-he	15. 00
	28.	Ne-kah-she-he	25. 00
May	2.	Ne-kah-she-he	10. 00
	5.	Ne-kah-she-he	30. 00
	11.	Ne-kah-she-he	30. 00
	15.	Ne-kah-she-he	10. 00
	19.	Ne-kah-she-he	25. 00
	23.	Ne-kah-she-he	15. 00
	26.	Ne-kah-she-he	25. 00
	31.	Ne-kah-she-he	10. 00
	29.	Ne-kah-she-he	5. 00
June	1.	Ne-kah-she-he	30. 00
	5.	Ne-kah-she-he	10. 00
	11.	Ne-kah-she-he	40. 00
	16.	Ne-kah-she-he	25. 00
	19.	Ne-kah-she-he	20. 00
	22.	Ne-kah-she-he	20. 00
	25.	Ne-kah-she-he	25. 00

July	2.	Ne-kah-she-he	\$50.00
	3.	Ne-kah-she-he	50.00
	9.	Ne-kah-she-he	25.00
	10.	Ne-kah-she-he	75.00
	17.	Ne-kah-she-he	25.00
Aug.	23.	Ne-kah-she-he	40.00
	26.	Ne-kah-she-he	15.00
	6.	Minnie Smith, allowance for James	5.00
	11.	Citizens National Bank, wire to Colorado Springs	201.98
	17.	Wire to Colorado Springs	201.00
Sept.	1.	Western Union Telegraph Co., wire transfer	200.00
	8.	Ne-kah-she-he	50.00
	13.	Ne-kah-she-he	10.00
	15.	Ne-kah-she-he	5.00
	17.	Ne-kah-she-he	25.00
Oct.	22.	Ne-kah-she-he	25.00
	24.	Ne-kah-she-he	20.00
	29.	Ne-kah-she-he	10.00
	1.	Ne-kah-she-he	50.00
	8.	Ne-kah-she-he	25.00
Nov.	12.	Ne-kah-she-he	10.00
	15.	Ne-kah-she-he	25.00
	16.	Ne-kah-she-he	25.00
	22.	Ne-kah-she-he	25.00
	29.	Ne-kah-she-he	25.00
Dec.	3.	Ne-kah-she-he	15.00
	5.	Ne-kah-she-he	25.00
	10.	Ne-kah-she-he	35.00
	8.	Ne-kah-she-he	10.00
	19.	Ne-kah-she-he	50.00
Jan.	23.	Ne-kah-she-he	10.00
	26.	Ne-kah-she-he	25.00
	30.	Ne-kah-she-he	10.00
	3.	Ne-kah-she-he	50.00
	8.	Ne-kah-she-he	10.00
Feb.	12.	Ne-kah-she-he	25.00
	15.	Ne-kah-she-he	25.00
	17.	Ne-kah-she-he	75.00
	20.	Ne-kah-she-he	25.00
	24.	Ne-kah-she-he, Christmas money	100.00
Mar.	31.	Ne-kah-she-he	50.00
	5.	Ne-kah-she-he	25.00
	12.	Ne-kah-she-he	25.00
	19.	Ne-kah-she-he	15.00
	19.	Ne-kah-she-he	30.00
Feb.	24.	Ne-kah-she-he	15.00
	26.	Ne-kah-she-he	30.00
	1.	Ne-kah-she-he	25.00
	2.	Ne-kah-she-he	30.00
	9.	Ne-kah-she-he	40.00
Mar.	16.	Ne-kah-she-he	30.00
	23.	Ne-kah-she-he	50.00

2,832.98

GENERAL EXPENSE

Mar.	24.	H. P. Alkire, drayage	1.50
	24.	Jennie Potts, cooking and washing	15.00
	24.	Triangle Barber Shop	6.00
	3.	Jennie Potts, cooking and washing	15.00
	12.	Jennie Potts, cooking and washing	15.00
Mar.	15.	T. T. Wortham, repairs to residence	7.53
	15.	Pawhuska Oil & Gas Co.	15.10
	15.	City clerk, electricity and water	5.60
	17.	Southwestern Bell Telephone Co.	1.75
	17.	Meeks-Tayrien Co., groceries	87.70
Mar.	17.	Jennie Potts, cooking and washing	15.00

Mar.	19. L. Futterman, clothing	\$71. 25
	21. J. H. Blackburn & Co.	7. 05
	23. C. G. Sego & Co., plumbing repairs	23. 35
	23. Osage Mercantile Co.	222. 75
	26. Jennie Potts, cooking and washing	15. 00
	28. F. S. Kelley Furniture Co.	111. 50
	30. T. Jones, repairs to house	23. 10
Apr.	2. Meeks Tayrien Grocery Co.	108. 53
	3. Jennie Potts, cooking and washing	15. 00
	6. Jennie Potts, cooking and washing	15. 00
	6. Reed Stores Co., schoolbooks	4. 47
	6. Triangle Barber Shop	6. 55
	10. City clerk, electricity and water	3. 55
	10. Pawhuska Oil & Gas Co.	14. 06
	14. B. H. Summers, repairs to phonograph	12. 65
	16. Southwestern Bell Telephone Co.	1. 75
	24. Jennie Potts, 2 weeks	30. 00
	30. Jennie Potts	15. 00
May	1. Pawhuska Hardware Co.	2. 50
	1. Meeks Tayrien Grocery Co.	104. 00
	5. Jennie Potts	15. 00
	9. J. H. Blackburn & Co.	7. 25
	11. Jennie Potts	20. 00
	11. City clerk, water and electricity	3. 55
	11. Pawhuska Oil & Gas Co.	12. 40
	15. Southwestern Bell Telephone Co.	3. 05
	16. Mrs. M. C. Shake, beaded belt	25. 00
	17. Osage Mercantile Co.	129. 75
	19. Jennie Potts	10. 00
	24. Jennie Potts	25. 00
June	1. Jennie Potts	5. 00
	5. Meeks Tayrien Grocery Co.	142. 20
	7. H. L. Canada, cutting weeds	4. 00
	7. Dora B. Givens flowers Decoration Day	30. 50
	11. Jennie Potts	15. 00
	11. City clerk electricity May	. 75
	11. Pawhuska Oil & Gas Co.	4. 94
	12. J. A. Puryear clock	15. 00
	13. Southwestern Bell Telephone Co.	1. 75
	15. Jennie Potts	15. 00
	19. McLaughlin & Co. trunk	11. 00
	22. F. S. Kelley Furniture Co.	70. 00
	23. L. Futterman clothing for children	39. 50
	25. Mrs. A. E. Moore cooking and washing	15. 00
July	2. Meeks Tayrien Grocery Co.	91. 95
	2. Mrs. A. E. Moore cooking	15. 00
	9. Mrs. A. E. Moore	15. 00
	9. Pawhuska Oil & Gas Co.	2. 28
	9. City clerk water and electricity	9. 75
	10. Southwestern Bell Telephone Co.	1. 75
	18. Maggie Stewart cooking and washing	15. 00
	21. The Curio Store	81. 20
	23. Maggie Stewart 6 days	13. 00
	25. Jennie Potts cooking and ironing	12. 50
	28. L. M. Colville taking ward to Colorado	400. 00
Aug.	6. Meeks Tayrien Grocery Co.	109. 25
	11. J. H. Blackburn & Co.	7. 75
	11. City clerk, water and electricity	2. 40
	11. Pawhuska Oil & Gas Co.	1. 60
	13. Minnie Smith, 3 weeks allowance	15. 00
	15. Southwestern Bell Telephone Co.	2. 55
Sept.	8. C. G. Sego & Co., plumbing	20. 40
	10. City clerk, water	. 75
	10. Jennie Potts	15. 00
	10. Pawhuska Oil & Gas Co.	1. 52
	13. Reed Stores Co., school books	5. 54
	13. Triangle Drug Co., school books	2. 98

Sept.	13.	Dixie Stores Co., dresses	\$9.98
	17.	L. Futterman, clothing	39.75
	17.	Pawhuska Hardware Co.	10.25
	18.	Southwestern Bell Telephone Co.	3.64
	19.	Jennie Potts, working	15.00
Oct.	20.	Mrs. M. C. Shake, making belt	15.00
	21.	McDowell & Castator Music Co.	23.66
	24.	Jennie Potts, cooking and washing	15.00
	1.	Jennie Potts, cooking and washing	15.00
	1.	Meeks Tayrien Grocery Co.	101.65
	8.	Osage Mercantile Co., clothing, etc.	298.05
	10.	Pawhuska Oil & Gas Co.	1.90
	12.	T. Jones, work on house	200.00
	12.	Jennie Potts	15.00
	15.	Southwestern Bell Telephone Co.	3.40
Nov.	17.	Jennie Potts, cooking and washing	15.00
	19.	T. Jones, work on house	200.00
	29.	Reed Stores Co.	1.98
	29.	J. H. Blackburn & Co., school supplies	.90
	30.	Jennie Potts	15.00
	1.	Jennie Potts	15.00
	1.	Meeks Tayrien Grocery Co.	103.05
	2.	T. Jones, balance, work on house	515.50
	8.	Jennie Potts	15.00
	10.	City clerk, water and electricity	12.65
Dec.	10.	Pawhuska Oil & Gas Co.	6.46
	10.	Southwestern Bell Telephone Co.	2.60
	19.	Nellie Kennedy, cooking and washing	15.00
	23.	Nellie Kennedy, cooking and washing	15.00
	30.	Nellie Kennedy, cooking and washing	15.00
	3.	Meeks Tayrien Grocery Co.	55.80
	6.	C. G. Sego & Co.	10.40
	6.	City Grocery & Market	104.45
	6.	Nellie Kennedy, working	15.00
	8.	Lottis Warrior, allowance	25.00
Jan.	10.	City clerk, water and electricity	9.10
	10.	Pawhuska Oil & Gas Co.	11.40
	13.	Nellie Kennedy	15.00
	13.	Singer Sewing Machine Co., repairs	3.00
	14.	T. T. Wortham	3.20
	14.	Pawhuska Hardware Co., bicycle tires	6.00
	14.	McLaughlin & Co.	2.00
	15.	Southwestern Bell Telephone Co.	2.90
	17.	L. Futterman	46.00
	17.	Nellie Kennedy, 2 weeks' cooking	30.00
Feb.	17.	Elks' Show Committee, tickets	6.00
	27.	F. S. Kelley Furniture Co.	227.50
	4.	City Grocery	150.40
	7.	Nellie Kennedy, 2 weeks	30.00
	10.	City of Pawhuska	8.00
	10.	Pawhuska Oil & Gas Co.	14.57
	14.	C. G. Sego & Co., plumbing repairs	11.00
	15.	Southwestern Bell Telephone Co.	2.00
	19.	Nellie Kennedy	15.00
	25.	Nellie Kennedy	15.00
Feb.	31.	Nellie Kennedy	15.00
	2.	C. G. Sego & Co., plumbing repairs	25.50
	9.	Nellie Kennedy, 2 weeks	30.00
	9.	Pawhuska Oil & Gas Co.	19.76
	9.	City of Pawhuska	12.00
	9.	Dixie Stores Co.	10.19
	13.	City Grocery	113.55
	18.	Southwestern Bell Telephone Co.	2.05
	22.	Nellie Kennedy	30.00

5,247.52

42,903.83

RECAPITULATION

Total amount received.....	\$43, 938. 23
Total amount paid out.....	42, 903. 83

Balance due..... 3, 034. 40

The following is an itemized account of all notes, bonds, accounts, and evidences of indebtedness, which are herewith presented for inspection, composing the personal estate of my said ward:

Certificate National Building & Loan Association, paid up.....	\$1, 010. 00
Stock National Building & Loan Association, installment, paid-up value of.....	5, 084. 94
Bonds, United States Liberty.....	300. 00
Do.....	100. 00
Investment in home.....	3, 500. 00
United States Treasury certificate.....	20, 260. 84
Citizens' National Bank, certificate of deposit.....	10, 000. 00
Total.....	40, 255. 78

All of which is respectfully submitted.

L. M. COLVILLE, *Guardian*.

STATE OF OKLAHOMA,
County of Osage, ss:

L. M. Colville, guardian of Ne-kah-she-he, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said incompetent from February 23, 1923, to the 23d day of February, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said incompetent, on hand the 23d day of February, 1924.

L. M. COLVILLE, *Guardian*.

Subscribed and sworn to before me, this _____ day of March, A. D. 1924.

My commission expires _____, *Notary Public*.

In the county court in and for Osage County, Okla. In the matter of the guardianship of S. H. Belieu, No. 930. H. J. Smith, guardian. No. 2369.

EXCEPTION TO REPORT

Comes now J. George Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter, which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore J. George Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage ss:

To the judge of the county court of said county: The undersigned, guardian of S. H. Bellieu, Osage allottee No. 930, would respectfully submit to the court the following report of his acts and doings as such guardian from March 30, 1923, to March 3, 1924. Guardian charges himself with the following, to wit:

1923			
Apr.	5.	Cash	\$1,000.00
	18.	Note, less interest, \$9.45	990.55
May	9.	Note	934.50
	24.	Note	100.00
June	9.	Note	155.00
	20.	Annuity	4,000.00
	28.	Note	1,500.00
July	6.	Note	1,500.00
Sept.	22.	Annuity	4,000.00
Dec.	18.	Annuity	1,900.00

Total amount of moneys received or collected..... 16,080.05

Guardian asks to be credited with the following sums, paid out as per receipts exhibited:

GUARDIANSHIP MATTERS.

1923			
July	12.	Pawhuska Abstract & Title Co., bond	\$90.00
	17.	The Traveler, guardian notice	4.80
	17.	Pawhuska Daily Journal, guardian notice	3.60
Oct.	7.	Thos. Leahy, court costs	12.25

1924			
Jan.	14-24.	Wilson, Murphey & Duncan, patent attorney fees	100.00

INSURANCE

1923			
June	20.	F.-N.-B., insurance K. C.	80.20
Dec.	10.	The Kansas City Life Insurance Co., insurance	80.20

TAXES

Sept.	12.	T. J. Leahy, income tax	25.00
	12.	Collector internal revenue, income tax	223.17

DOCTOR BILLS, HOSPITAL, AND SICKNESS

Apr.	12.	Joyce Bellieu, paid to I. W. Jones, M. D., services	300.00
May	2.	Garrett Bros., funeral expenses	934.50
	2.	Clara Barton Hospital, services	75.95
	9.	Draft at Arkansas City, funeral expenses	150.00

LIVING AND MISCELLANEOUS EXPENSES

Mar.	19.	L. Greenberg	51.50
	15.	Eileen DeNoya	31.50
	19.	Cash, allowance	12.00
	21.	Sweet shop	10.00
	31.	Osage Hotel Co., services	10.00
Apr.	7.	Joyce Bellieu, expenses	25.00
	9.	S. H. Bellieu, expenses	25.00
		J. E. Derry Auto Top Co.	45.00
	12.	Cash, allowance	10.00
	12.	Joyce Bellieu, expenses	10.00
	14.	Duncan Hotel, hotel bill	131.75
	14.	Ponca City Garage, account	95.25
	18.	Art Johnson, car	1,064.69
June	4.	Jack Stingley	145.75
	12.	Colorado Cab Co.	200.00
	15.	H. J. Smith, telegram to Los Angeles	1.36

June	23.	Gum Bros. Co., note and interest	\$282.40
	23.	Jean Stairs Shop, account	18.50
	23.	Joe Liebenheim, account	76.50
	25.	C. F. Stuart, note	543.05
	25.	C. F. Stuart, account insurance	46.50
	26.	First National Bank, notes	3,379.75
	29.	Yorkshire Hotel, room, 1 month	65.00
	29.	S. H. Bellieu, allowance	30.00
July	7.	Triangle Drug Co.	3.85
	9.	Yorkshire Hotel, room rent	55.30
	9.	Grand Central Garage, storage	20.00
	10.	S. H. Bellieu, allowance	30.00
	17.	P. S. Mason, 6 months interest on note	23.76
	17.	S. H. Bellieu, allowance	30.00
	18.	General Motor Acceptance Corporation, note	771.44
Aug.	7.	General Motor Acceptance Corporation, interest on account	10.91
	9.	S. H. Bellieu, allowance	60.00
	9.	J. B. Talbott, pressing and cleaning	24.00
	16.	S. H. Bellieu, allowance	30.00
	20.	S. H. Bellieu, allowance	30.00
	22.	H. A. Morris	90.00
Sept.	30.	First National Bank, 2 notes	3,085.00
Oct.	1.	K. W. Hill, take up hot check	30.00
	15.	Clayton N. Smith, loan, Sept. 5, 1923	20.00
	16.	Gum Bros., interest on farm loan	420.00
	29.	Gum Bros. Co., accrued interest	2.10
	29.	John S. Sweet, hotel bill \$99.30, cash \$150	249.30
Nov.	3.	S. H. Bellieu, allowance	60.00
	8.	G. E. Stanbro, interest on two mortgage loans	70.00
	10.	S. H. Bellieu, allowance	60.00
	17.	Louis Fink, apply on account	150.00
	17.	Western Union Telegraph Co., telegram	1.40
	21.	S. H. Bellieu, allowance	60.00
	21.	The Metropolitan, hotel bill	54.70
	27.	S. H. Bellieu, allowance	60.00
Dec.	1.	S. H. Bellieu, allowance	60.00
	8.	Steve Bellieu, allowance	60.00
	12.	Mrs. S. H. Bellieu, Christmas money	50.00
	14.	Henniger Men's Shop, account	35.00
	14.	T. B. Olroyd, account	43.00
	14.	O. K. Cleaners & Tailors, services	8.00
	14.	Louis Fink, to apply on account	150.00
	14.	E. G. Collins, account	9.50
	14.	Kroenerts, account in full	48.65
	14.	E. L. McDowell, on account	75.00
1924			
Jan.	14.	E. L. McDowell, on account	100.00
1923			
Dec.	14.	Hamilton & Cullison Hardware Co., one-half of account	32.80
1924			
Jan.	14.	Hamilton & Cullison Hardware Co., on account	32.80
1923			
Dec.	14.	Stettheimers, on account	100.00
1924			
Jan.	14.	Stettheimers, on account	100.00
1923			
Dec.	15.	S. H. Bellieu, allowance	60.00
	22.	S. H. Bellieu, allowance	60.00
	29.	Steve Bellieu, allowance	60.00
1924			
Jan.	5.	Steve Bellieu, allowance	60.00
	12.	Steve Bellieu, allowance	60.00
	14.	Somerfield Hess Fire Rubber Co., account	100.00
	14.	Security National Bank, on account note	200.00
	19.	S. H. Bellieu, allowance	60.00

1924

Jan.	26.	S. H. Bellieu, allowance	\$60.00
	27.	Hudson Essex, car	38.17
Feb.	2.	S. H. Bellieu, allowance	60.00
	9.	S. H. Bellieu, allowance	60.00
	16.	S. H. Bellieu, allowance	60.00

Total..... 15,734.85

RECAPITULATION

Total amount received	16,080.05
Total amount paid out	15,734.85
Balance due	345.20

All of which is respectfully submitted.

H. J. SMITH, *Guardian*.

STATE OF OKLAHOMA,
County of Osage, ss:

H. J. Smith, guardian of S. H. Bellieu, Osage allottee No. 930, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said incompetent from March 30, 1923, to the 3d day of March, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said incompetent on hand the 3d day of March, 1924.

H. J. SMITH, *Guardian*.

Subscribed and sworn to before me, this 4th day of March, A. D. 1924.

[SEAL.]

LENA AEMISEGGER, *Notary Public*.

My commission expires September 20, 1924.

In the county court in and for Osage County, Okla. In the matter of the guardianship of James Strickaxe; Joe S. McGuire, guardian. No. 1240

EXCEPTION TO REPORT

Comes now J. Geo. Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter, which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore J. Geo. Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage, ss:

To the judge of the county court of said county: The undersigned, guardian of James Strikeaxe, would respectfully submit to the court the following report of his acts and doings as such guardian from March 1, 1923, to February 21, A. D. 1924; Joe S. McGuire charges himself with the following, to wit:

1923	Balance on hand last report.....	\$4. 06
Mar.	10. Rent.....	35. 00
	13. Rent.....	100. 00
	22. Agency check.....	1, 900. 00
May	21. Rent.....	100. 00
	31. Rent.....	100. 00
June	20. Agency check.....	4, 000. 00
July	11. Rent.....	640. 00
Oct.	5. Agency check.....	4, 000. 00
Dec.	28. Agency check.....	1, 900. 00
	31. Agency check.....	1, 000. 00
1924		
Feb.	18. Rent.....	300. 00

Total amount of moneys received or collected..... 14, 079. 06

Guardian asks to be credited with the following sums, paid out as per receipts exhibited:

INVESTMENTS AND UPKEEP OF PROPERTY

1923		
Mar.	10. National Building & Loan Association.....	\$50. 00
	23. Wichita Nursery Co., shrubs for residence.....	204. 50
Apr.	10. National Building & Loan Association.....	50. 00
May	10. National Building & Loan Association.....	50. 00
	1. M. K. Mansfield, hauling trash.....	1. 00
	15. C. Roberts, work on yard.....	5. 00
	22. Jack Shaddock, carpenter work.....	3. 00
	26. James Bohanan, cutting yard.....	4. 50
	31. James Bohanan, cutting yard.....	1. 50
June	1. M. K. Mansfield, hauling garbage.....	1. 00
	4. James Bohanan, cutting yard.....	1. 50
	10. National Building & Loan Association.....	50. 00
	11. James Bohanan, mowing lawn.....	1. 50
	22. James Bohanan, cutting yard.....	2. 00
	24. James Bohanan, cutting yard.....	2. 00
	30. M. K. Mansfield, hauling trash.....	1. 00
July	7. James Bohanan, cutting yard.....	2. 00
	25. James Bohanan, cutting yard.....	4. 00
	10. National Building & Loan Association.....	50. 00
	13. Ruble Motor Co., Dodge touring car.....	1, 125. 00
	17. Joe S. McGuire, insurance on Dodge.....	56. 03
	28. Harry Drumm, repair lawn mower.....	2. 00
Aug.	4. M. K. Mansfield, hauling trash.....	1. 00
	10. National Building & Loan Association.....	50. 00
Sept.	5. M. K. Mansfield, hauling trash.....	1. 00
	10. National Building & Loan Association.....	50. 00
	26. Ida Hamilton, cleaning house.....	2. 50
Oct.	1. M. K. Mansfield, hauling trash.....	1. 00
	10. National Building & Loan Association.....	50. 00
	19. Earnest Powell, cutting yard.....	3. 00
	20. Benson Lumber Co., locks for door.....	9. 75
Nov.	1. M. K. Mansfield, hauling trash.....	1. 00
	10. National Building & Loan Association.....	50. 00
Dec.	3. M. K. Mansfield, hauling trash.....	1. 00
	10. National Building & Loan Association.....	50. 00
	19. Ruble Motor Co., overhauling car.....	29. 90
	31. National Building & Loan Association, block.....	5, 000. 00

1924		
Jan.	2. M. K. Mansfield, hauling trash.....	\$1. 00
	10. National Building & Loan Association.....	50. 00
Feb.	5. M. K. Mansfield, hauling trash.....	1. 00
	5. Benson Lumber Co., glass.....	2. 70
	6. C. G. Sego & Co., plumbing repair.....	8. 75
Mar.	10. National Building & Loan Association.....	50. 00

7, 081. 13

GUARDIANSHIP AND COURT COSTS

1923		
Mar.	6. W. E. Savage, appraisalment and plat.....	25. 00
	23. Sands, Holcombe & Lohman, attorney fees.....	150. 00
	20. Dick Bardon Loan Co., Jim Strikeaxe, coat.....	7. 70
	23. R. H. Stodder, attorney for Oklahoma Hotel.....	53. 00
	23. Joe S. McGuire, guardianship fee.....	300. 00
Dec.	5. R. L. Chambers, legal services as per court order, Colorado Springs.....	25. 00
1924		
Jan.	4. Bird S. McGuire, attorney fee, Ralston.....	250. 00

810. 70

TAXES AND INSURANCE

1923		
Mar.	15. Lee Dixon, county treasurer, personal taxes.....	87. 34
July	17. Citizens National Bank, automobile license, cashier's check.....	6. 50
	24. Joe S. McGuire, liability insurance.....	12. 00
Dec.	28. County treasurer, taxes, 1923.....	292. 16
1924		
Feb.	4. Stephenson-Moore, license on Dodge.....	13. 50
1923		
June	23. T. J. Leahy, income tax, 1922.....	253. 70
		665. 20

MEDICAL EXPENSES

Mar.	24. Dr. E. K. Witcher, doctor bill for Deloris and Jim.....	300. 00
	28. Deloris Strikeaxe, trip to Sulphur.....	50. 00
June	22. Link Drug Store (Inc.), balance due.....	87. 25
	22. Lovelace Drug Co., account rendered.....	2. 25
	22. Dr. E. K. Witcher, balance on account.....	232. 00
	22. Puritan Sanatorium, balance James Strikeaxe account.....	152. 06
Aug.	3. Hurt & Whiteker, merchandise.....	10. 00
	28. Dr. H. B. McCarkle, money advanced James S.....	100. 41
Sept.	18. Hurt & Whiteker, merchandise.....	31. 25
	26. Blidgie Blinkson, nurses' fee.....	130. 00
Oct.	10. Dr. E. K. Witcher, medical attention as per statement.....	169. 00
	10. Virginia Orr, nursing Mr. and Mrs. Strikeaxe.....	140. 00
Dec.	12. Dr. T. P. Govan, fitting glasses for Delores.....	20. 00
	14. Hurt & Whiteker, on account for Jim and Deloris while taking treatment.....	50. 00
	17. Dr. E. K. Witcher, medical services.....	10. 00
1924		
Jan.	3. Dr. O. R. Gregg, medical attention.....	11. 00
	28. Dr. L. C. Williams, medical attention.....	8. 00
Feb.	15. Dr. E. K. Witcher, medical services.....	4. 00
	14. Dr. Roseoe Walker, two calls.....	6. 00

Total..... 1, 513. 22

OSAGE FUND RESTRICTIONS

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DONATIONS

1923		
May	15. Salvation Army donation.....	\$25. 00

GENERAL EXPENSES

Mar.	1. Doloris Strikeaxe, allowance and laundry.....	10. 00
	2. Osage Merchandise Co., merchandise.....	4. 50
	3. James Strikeaxe, allowance.....	10. 00
	6. Doloris Strikeaxe, allowance.....	5. 00
10.	James Strikeaxe, allowance.....	5. 00
	9. Pawhuska Oil & Gas Co., gas bill.....	7. 68
	9. City clerk, water and electricity.....	5. 35
	7. Doloris Strikeaxe, laundry.....	5. 00
	13. James Strikeaxe, allowance.....	5. 00
	12. Southwestern Bell Telephone Co., telephone bill.....	3. 65
	13. Charles Barnett, papers.....	. 78
	16. Deloris Strikeaxe, allowance.....	10. 00
	16. Harris Taxi, car.....	6. 00
	17. James Strikeaxe, allowance.....	5. 00
	23. James Strikeaxe, allowance.....	25. 00
	23. First National Bank, note.....	100. 00
	28. Masters-Freeman, balance on account.....	12. 65
	27. James Strikeaxe, allowance.....	5. 00
	27. Deloris Strikeaxe, suit.....	25. 00
	31. James Strikeaxe, allowance.....	5. 00
Apr.	4. Deloris Strikeaxe, laundry.....	5. 00
Mar.	31. Deloris Strikeaxe, allowance.....	5. 00
Apr.	2. C. G. Sego & Co., balance on account.....	18. 55
	4. M. K. Mansfield, hauling garbage.....	1. 00
	4. James Strikeaxe, allowance.....	5. 00
	7. James Strikeaxe, allowance.....	5. 00
	6. Deloris Strikeaxe, allowance.....	5. 00
	7. Enterprise Cleaners, suit.....	1. 50
	9. Deloris Strikeaxe, laundry.....	5. 00
	9. Deloris Strikeaxe, allowance.....	20. 00
	9. Tulsa World, dictionary.....	. 98
	10. E. C. Latshaw, groceries, Feb. 8, 1923 to Apr. 10, 1923.....	166. 08
	11. Charles Barnett, papers.....	1. 56
	13. Mrs. W. A. Wheelock, dress.....	15. 00
	16. Southwestern Bell Telephone Co., telephone No. 1033J.....	6. 30
	12. Deloris Strikeaxe, allowance.....	5. 00
	13. Deloris Strikeaxe, allowance.....	5. 00
	16. James Strikeaxe, allowance.....	5. 00
	16. Pawhuska Oil & Gas Co., for gas.....	10. 00
	16. City clerk, water and electricity.....	6. 90
	13. Pawhuska Ice Co., ice book.....	6. 50
	17. James Strikeaxe, laundry money.....	5. 00
	17. Deloris Strikeaxe, allowance to Saturday, April 21, 1923.....	5. 00
	20. Deloris Strikeaxe, allowance.....	5. 00
	21. R. A. Conell, loan.....	25. 00
	9. Josie Holt, cleaning house.....	9. 00
	24. Deloris Strikeaxe, allowance.....	5. 00
	24. Pawhuska Hardware Co., account.....	1. 25
	23. James Strikeaxe, allowance.....	5. 00
	26. James Strikeaxe, allowance.....	5. 00
	28. Osage Boot Shop, shoe repair.....	1. 50
	28. Deloris Strikeaxe, allowance.....	5. 00
May	1. Deloris Strikeaxe, laundry.....	5. 00
Apr.	30. James Strikeaxe, allowance.....	5. 00
May	2. Pawhuska Hardware Co., account.....	3. 70
April	26. Deloris Strikeaxe, allowance.....	5. 00
May	4. James Bohanan, work.....	3. 50
	4. Deloris Strikeaxe, allowance.....	5. 00
	7. James Strikeaxe, allowance.....	5. 00
	7. Deloris Strikeaxe, laundry.....	5. 00
	11. Deloris Strikeaxe, allowance.....	5. 00

1923		
May	8.	Deloris Strikeaxe, laundry..... \$5.00
	7.	James Strikeaxe, allowance May 7, 1923..... 5.00
	14.	James Strikeaxe, allowance..... 5.00
	15.	Pawhuska, Oil & Gas Co., gas..... 6.00
	15.	Southwestern Bell Telephone Co., 1033J..... 1.50
	15.	Deloris Strikeaxe, laundry..... 5.00
	15.	City of Pawhuska, light and water..... 6.35
	14.	Deloris Strikeaxe, laundry..... 5.00
	21.	James Strikeaxe, allowance to May 26, 1923..... 25.00
	21.	C. G. Sego & Co., plumbing..... 2.70
	21.	Chas. Barnett, papers..... 3.20
	24.	Deloris Strikeaxe, laundry..... 5.00
	28.	James Strikeaxe, allowance..... 5.00
	28.	Deloris Strikeaxe, allowance..... 5.00
	15.	Deloris Strikeaxe, allowance..... 35.00
	29.	Deloris Strikeaxe, allowance..... 10.00
	31.	Harris Taxi Co., to cemetery..... 2.00
	26.	Deloris Strikeaxe, laundry and house cleaning..... 6.50
	26.	Pawhuska Ice Co., ice book..... 6.50
June	1.	Pawhuska Hardware Co., merchandise..... 11.25
	1.	Deloris Strikeaxe, allowance..... 5.00
	1.	Enterprise Cleaners, account..... 3.00
	2.	James Strikeaxe, allowance..... 5.00
	4.	Deloris Strikeaxe, laundry..... 5.00
	4.	James Strikeaxe, allowance..... 5.00
	11.	Deloris Strikeaxe, laundry..... 5.00
	9.	Deloris Strikeaxe, allowance..... 2.50
	11.	James Strikeaxe, allowance..... 2.00
	14.	Southwestern Bell Telephone Co., telephone..... 3.45
	14.	Pawhuska Oil & Gas Co., gas..... 6.00
	14.	Harris Taxi Co., driving..... 5.50
	14.	Deloris Strikeaxe, allowance..... 5.00
	14.	City clerk, electricity and water..... 6.05
	18.	Deloris Strikeaxe, laundry..... 5.00
	30.	James Strikeaxe, allowance..... 5.00
	20.	First National Bank, note..... 202.00
	18.	James Strikeaxe, allowance..... 5.00
	16.	James Strikeaxe, allowance..... 5.00
	23.	Deloris Strikeaxe, allowance..... 25.00
	20.	Mrs. E. C. Latshaw, groceries..... 200.00
	21.	James Strikeaxe, allowance..... 2.00
	22.	Pickens Ladies Wear, as per account rendered..... 130.00
	24.	James Strikeaxe, allowance..... 20.00
	22.	Osage Mercantile Co., account rendered..... .80
	22.	Joe Liebenheim, account as rendered..... 230.40
	24.	Deloris Strikeaxe, laundry..... 5.00
	24.	Pawhuska Ice Co., ice book..... 6.50
	27.	Chas. Barnett, papers..... 2.20
	30.	Mrs. W. A. Wheelock, allowance..... 5.00
	30.	W. E. McGuire, chataqua tickets..... 10.00
July	2.	Deloris Strikeaxe, July allowance..... 151.00
	6.	A. C. Floral Co., flowers..... 9.20
	6.	The Bootrie, shoes..... 8.00
	13.	Pauls Shop, dress..... 14.50
	11.	Latshaw Grocery, groceries..... 61.67
	28.	James Strikeaxe, allowance for August..... 142.50
	24.	Pawhuska Ice Co., ice book..... 3.25
	27.	W. E. McGuire, money advanced..... 5.00
	30.	Pawhuska Hardware Co., merchandise..... 39.00
Aug.	3.	Bill Lighfoot, money advanced..... 2.00
	2.	Smith Racket Store, automobile supplies..... 7.50
	29.	James Strikeaxe, allowance..... 5.00
	14.	Western Union return from Colorado..... 30.00
	20.	Chas. Barnett, papers..... 2.40
	31.	Deloris Strikeaxe, allowance..... 25.00
	28.	Deloris Strikeaxe, allowance..... 5.00
Sept.	4.	Will Browning, room Windsor Hotel..... 19.00

1923

Aug.	31.	Osage Café, meal ticket	\$4. 50
Sept.	4.	Deloris Strikeaxe, allowance	2. 00
	4.	Osage Café, two meal tickets	9. 00
	7.	The Bootrie, Deloris shoes	8. 00
	10.	R. A. Connell, money advanced	25. 00
	10.	Pawhuska Oil & Gas Co., gas	1. 40
	12.	James Strikeaxe, allowance	2. 00
	17.	Southwestern Telephone Co., 1033W	9. 60
	15.	Will Browning, room rent	8. 00
	15.	Pawhuska Ice Co., ice book	6. 50
	17.	Master-Freeman, clothing	10. 75
	17.	J. F. Boone, groceries	24. 00
	15.	Acme Laundry, laundry	6. 70
	17.	J. F. Jelsma, broom	2. 60
	15.	City clerk	3. 90
	17.	Deloris Strikeaxe, allowance	41. 50
	19.	Dave German, barber work	2. 35
	21.	Earnest Powell, work on yard	6. 00
	22.	Osage Café, 2 meal tickets	9. 00
	22.	Harris Taxi Co.	10. 50
	26.	Kathleen Williams, work at house	. 60
	22.	Acme Laundry, laundry	5. 95
	27.	Harris Cab Co.	1. 00
	28.	James Strikeaxe, allowance	5. 00
	29.	J. F. Boone, groceries	40. 00
	28.	Post Office News, magazines	1. 15
Oct.	1.	Ida Hamilton, cleaning house	3. 00
	3.	Pawhuska Oil & Gas Co., September, 1923	1. 90
	3.	Osage Mercantile Co., account October, 1923	20. 50
	3.	C. G. Sego & Co. merchandise as per statement	6. 25
	1.	Yellow Cab Co., trip to camp	1. 00
	2.	Acme Laundry, laundry	1. 80
	6.	Chas. Barnett, papers to Nov. 1, 1923	29. 5
	6.	Ida Hamilton, cleaning house	1. 50
	13.	Ida Hamilton, cleaning house	1. 50
	13.	Acme Laundry, laundry	10. 60
	15.	J. F. Boone, groceries Sept. 29 to Oct. 13, 1923	40. 00
	20.	Ida Hamilton, cleaning house	1. 50
	20.	Acme Laundry, laundry	5. 35
	16.	City clerk, water and lights	6. 00
	19.	Pawshuka High School, football tickets	5. 00
	24.	James Strikeaxe, allowance	1. 50
	24.	James Strikeaxe, No. 1033W	4. 30
	29.	J. F. Hunter, Oct. 23 to 29, 1923	13. 35
	29.	Deloris Strikeaxe, papers	1. 00
	29.	Francis Moore, work	1. 50
Nov.	2.	J. F. Boone, groceries, Oct. 13 to Oct. 23, 1923	39. 64
	1.	Rosella Rucker, cleaning house	1. 50
	5.	J. H. Hunter, groceries, Oct. 29 to Nov. 5, 1923	15. 70
	6.	James Strikeaxe, allowance	5. 00
	13.	Rosella Rucker, cleaning house	1. 50
	10.	Southwestern Bell Telephone Co., No. 1033W	11. 45
	8.	Acme Laundry, laundry	5. 20
	13.	J. H. Hunter, groceries, Nov. 5 to Nov. 12, 1923	19. 95
	10.	W. E. McGuire, money advanced	7. 00
	12.	James Strikeaxe, allowance	1. 00
	14.	Chas. Barnett, papers to Dec. 1, 1923	2. 25
	10.	City clerk, water and electricity	8. 00
	10.	Pawhuska Oil & Gas Co., October	4. 56
	15.	James Strikeaxe, allowance	2. 00
	19.	J. H. Hunter, Nov. 12 to Nov. 19, 1923	20. 05
	19.	Rosella Rucker, cleaning house	1. 50
	22.	First National Bank	400. 00
	22.	Acme Laundry, laundry	7. 75
	30.	C. G. Sego & Co., balance	4. 25

1923		
Nov.	26. Harry Leanen	\$9. 60
	30. Acme Laundry, laundry	4. 05
Dec.	3. Anna Drew, cleaning house	2. 00
	3. J. H. Hunter, groceries, Nov. 12 to Dec. 1, 1923	41. 35
	3. James Strikeaxe, allowance	1. 00
	3. Voyle Turner, Pawhuska Daily Capital	1. 50
	5. Acme Laundry, laundry	4. 80
	6. Harris Taxi Co., taxi, September, October, and November	10. 00
	6. Deloris Strikeaxe, allowance	2. 00
	10. H. Baird, magazines	1. 00
	10. City clerk	8. 05
	10. Wheelocks, 2 pair hose	4. 00
	10. Pawhuska Oil & Gas Co., for gas	7. 60
	11. J. Hunter, Dec. 3 to 9	20. 20
	14. Rosella Rucker, cleaning house, two weeks	3. 00
	13. W. E. McGuire, money advanced	7. 00
	13. Deloris Strikeaxe, allowance	2. 00
	17. Deloris Strikeaxe, allowance	2. 00
	19. Post Office Confectionery	1. 50
	21. Deloris Strikeaxe, Christmas money	20. 00
	21. Rosella Rucker, cleaning house	1. 50
	23. James Strikeaxe, allowance	2. 00
	26. Chas. Barnett, papers	1. 80
	24. James Strikeaxe, allowance	23. 00
	26. J. H. Hunter, Dec. 24	37. 55
	31. Deloris Strikeaxe, allowance	10. 00
	31. Southwestern Bell Telephone Co., telephone	15. 15
1924		
Jan.	3. James Strikeaxe, allowance	2. 00
	7. James Strikeaxe, allowance	2. 00
	5. James Strikeaxe, allowance	8. 00
	7. Mrs. E. L. Latshaw, groceries	60. 00
	8. Deloris Strikeaxe, allowance	2. 00
	8. Joe McGuire, expenses of Jim and self to Tulsa	14. 20
	8. James Strikeaxe, allowance	8. 00
	11. James Strikeaxe, allowance	2. 00
Jan.	12. Jim Strikeaxe, allowance	2. 00
	12. American Legion, dues, 1924	3. 00
	29. Hub Bootrie Co., shoes for James S	9. 95
	12. Deloris Strikeaxe, allowance	3. 00
	13. James Strikeaxe, allowance	2. 00
	16. Pawhuska Oil & Gas Co., gas, Jan. 1, 1924	8. 82
	16. Southwest Bell Telephone Co., No. 1033W	11. 75
	15. City Clerk, water and electricity	7. 95
	19. Deloris Strikeaxe, allowance	2. 00
	26. Deloris Strikeaxe, allowance	2. 00
	30. James Strikeaxe, allowance	3. 00
	31. L. A. Larsen, shoes	15. 00
Feb.	2. Deloris Strikeaxe, allowance	7. 00
	5. James Strikeaxe, allowance	2. 00
	5. Pawhuska Hardware Co., stove	15. 00
	6. James Strikeaxe, allowance	1. 00
Jan.	28. Mrs. B. F. Mason, Xmas seal fund	10. 00
Feb.	9. Deloris Strikeaxe, allowance	25. 00
	8. Chas. Barnett, January and February papers	3. 60
	9. Mrs. E. C. Latshaw, groceries	80. 00
	11. Deloris Strikeaxe, allowance to Mar. 9	100. 00
	15. Pawhuska Oil & Gas Co., gas, January	13. 60
	14. Retail Merchants' Association, checks	13. 50
	15. City clerk, water and electricity	11. 55
	20. James Strikeaxe, allowance	3. 00
Total		3, 905. 72

RECAPITULATION

Total amount received.....	\$14, 079. 06
Total amount paid out.....	14, 000. 97
Balance due.....	78. 09

The following is an itemized account of all notes, bonds, accounts, and evidences of indebtedness, which are herewith presented for inspection, composing the personal estate of my said wards:

DESCRIPTION

Lot 1, block 7, original town site, Pawhuska, Okla.
One Dodge touring car.
All of which is respectfully submitted.

JOE S. MCGUIRE, *Guardian*.

STATE OF OKLAHOMA,

County of Osage, ss:

Joe S. McGuire, guardian of James Strikeaxe, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said minor from March 1, 1923, to the 21st day of February, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said minor, on hand the 21st day of February, 1924.

JOE S. MCGUIRE, *Guardian*.

Subscribed and sworn to before me this 5th day of March, A. D. 1924.

[SEAL.]

MINNIE McLAUGHLIN,

Notary Public.

My commission expires October 29, 1925.

In the County Court in and for Osage County, Okla. In the matter of the guardianship of Wah to sah, No. 111, incompetent. Elizabeth Stuart, guardian. No. 1412.

EXCEPTION TO REPORT

Comes now J. Geo. Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter, which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore J. Geo. Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,

Superintendent Osage Agency.

STATE OF OKLAHOMA,

County of Osage, ss:

To the judge of the county court of said county: The undersigned, guardian of Wah to sah, Osage allottee No. 111, incompetent, would respectfully submit to the court the following report of her acts and doings as such guardian from December 13, 1923, to March 6, 1924:

1923		
Dec.	13. Balance on hand at date of last report.....	\$16, 014. 45
	22. C. F. Lake, interest on loan.....	195. 00

Q. Did you see him during February of this year and talk to him about Martha?—A. I think I did.

Q. Did he inform you he had received \$100 on the 22d day of February from Martha Washington?—A. I don't think so.

Q. Then, if the records show that Martha Washington received \$100 from the Farmers State Bank of Vinita along about February, and received \$75 a week each week until after August of this year, her statements to you would be false would they not?—A. Well, I don't remember; I can tell you by referring to the letter.

Q. You stated she told you she did not receive any money?—A. Yes; I think I am correct about that.

Q. Then, if the records disclose that she did actually receive this money, from her conversations with you her statements would be false?—A. They might be and they might not be.

Q. From your evidence you put into the record here a few moments ago—A. Yes, sir.

Q. If the record discloses that she did in fact receive money during that period of time amounting to \$75 a week, then her statements to you as recorded by your testimony would be false?—A. If that is the record in the case my statement is incorrect, because here is what I should have said, "That she has not been receiving this amount" is what I should have said, if I said she had not received any money.

Q. So you want to correct that?—A. I want to correct that to show she said she had been allowed \$75 a week by the county court of this county and has not been receiving this money.

Q. When was that statement made?—A. The 29th day of September.

Q. Of this year?—A. Yes, sir.

Q. Do you know from your conversation with Martha and John Axe Washington whether she had been receiving her weekly allowance up to August of this year?—A. I do not.

Q. Then your statements made by you in your examination in chief obtained only to what she told you in September of this year?—A. I think that is the first time she made complaint.

Q. And at the time she made that statement to you had or had not this proceeding been filed in this court?—A. For which?

Q. For the transfer of the papers to your county?—A. I am inclined to think not.

Q. Do you know anything about the proceedings filed in March of this year?—A. She told me; yes.

Q. Did she tell you about a deal she made with attorneys in Tulsa to attempt to have the guardianship transferred to Tulsa County?—A. No; she didn't.

Q. Did she tell you anything of an attempt to transfer the matter back to Washington County, her former residence?

MR. CHANDLER. We object to that.

THE COURT. Overruled.

A. She told me of this prior proceeding in Osage County and the one to remove the guardian.

Q. I believe you said you have known her 12 or 15 years.—A. Yes, sir.

Q. Do you know where their lands are located, allottees?—A. John Axe Washington has not land in the Five Civilized Tribes; I know where Martha's allotment is located.

Q. In what county is it located?—A. Washington, from what she told me.

Q. Do you know Martha Washington had a guardian in Washington County before she moved to Osage County?—A. She told me she did.

Q. Then, if Martha Washington was living in Washington County six years ago, then her original domicile would not be in Craig County; is that true?—A. Her original domicile was Craig County, because she was allotted there, allotted as a Shawnee.

Q. She was allotted and later located there?—A. Yes; I think so.

Q. Her homestead allotment was in Washington County?—A. I think so.

Q. And they moved there about when?—A. Moved there when she was a small child.

Q. And lived there until they moved to Osage County and she became the wife of To-wah-e-he?—A. I don't think so. I think they have always claimed the homestead was in Craig County, near the Beaver place.

Q. She didn't tell you she attempted to transfer this matter to Tulsa?—A. No, sir.

Q. And the time she told you she was not getting her money was in September of this year?—A. Yes; I am inclined to think since refreshing my memory that was about the date of the complaint.

Q. Do you know of her receiving \$250 in September or the 1st of October?—A. No; I don't.

Mr. CHANDLER. She didn't receive it, either.

Q. You are tribal attorney over there, are you?—A. Yes; for that district.

Q. Are you also guardian for some Cherokee Indians?—A. No, sir.

Q. Any Indians?—A. Yes; guardian for one.

Q. Who is that one?—A. Maude Lee Mudd.

Q. Maude Lee Mudd is an Osage Indian, is she not?—A. Half Seneca and half Osage, unallotted.

Q. The girl who has had so much notoriety over the Beaver estate?—A. Yes, sir.

Q. Who are your attorneys in that case?—A. Mr. Chandler is one and Mr. Fitzgerald at Miami.

Examination by Mr. CHANDLER:

Q. You was asked the question awhile ago if the allotment and homestead allotment of Martha Washington was not taken in Washington County; in allotting the members of the Five Civilized Tribes were the allotments always taken where the residence was?—A. No, sir.

Q. An Indian might live in Adair County and have an allotment in Washington County, might he not?

Mr. STRUGELL. Objected to as immaterial.

The COURT. Objection overruled.

A. Many of them were so allotted; yes, sir.

Q. When you referred to her original residence in Craig County, that was before she moved from Craig County to Washington County and to this county, was it not?—A. Yes, sir.

Q. Her original residence up from the time you knew her until she went to Washington County was in White Oak, was it not?—A. Yes, sir.

(Witness dismissed.)

J. S. MARTIN, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. CHANDLER:

Q. State your name.—A. J. S. Martin.

Q. Where do you reside?—A. Vinita, Okla.

Q. About the 1st of February, 1923, did you have occasion to furnish a home for Martha Washington?—A. Yes, sir.

Q. Where was it?—A. At White Oak, west of Vinita.

Q. In Craig County?—A. Yes, sir.

Q. Do you know whether Martha Washington has been living there or in Vinita since that date?—A. Yes, sir.

Q. Has she?—A. She has.

Q. Does she claim that as her home?—A. She does.

Q. Has she been living there continuously since about the 1st of February this year?—A. Yes, sir.

(Witness dismissed.)

Petitioner rests.

Comes now the guardian, L. T. Hill, and demurs to the evidence of the applicant for the reason that same is irrelevant, incompetent, and immaterial and is not sufficient to establish the factum of the allegations; that the issues as they are not joined is to the effect and the allegations of the petition attempts to show that Martha Washington and her guardian have moved and become domiciled in Craig County and that it is for the best interest of the applicant to transfer all the papers to Craig County; that there is not authority of law to authorize the transfer of papers in incompetent cases to any other county than that of the domicile of the guardian; the record also shows that all of the estate of Martha Washington is in Osage County.

The COURT. That is what I want to know.

Mr. SUTHERLAND. She has one and a half Osage estate in this county.

Mr. CHANDLER. We admit that all the property except her allotment in Washington County, Okla., is in this county, but that her residence, her legal residence, we contend is in Craig County. We admit she has no property by reason of the writ of replevin; all her property in Craig County was taken away from her and brought back to Osage County.

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter which is contrary to the act of Congress made and approved for the protection of incompetent, minor and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount and cash on hand on the day said account was made.

Wherefore, J. Geo. Wright, Superintendent of the Osage Agency, prays the judgment of the Honorable Court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA,
County of Osage, ss:

To the judge of the county court of said county: The undersigned, guardian of Don Dickerson, Osage allottee No. 153, incompetent, would respectfully submit to the court the following report of her acts and doings as such guardian from December 13, 1923, to March 11, A. D. 1924. She charges herself with the following, to wit:

Dec.	12. Balance on hand at date of last report	\$15,080.90
	22. Interest on C. F. Lake loan	130.00

1924

Jan.	9. December, 1923, annuity	4,469.45
	14. Money borrowed temporarily	3,000.00
Feb.	7. Building and loan dividend	22.50
	27. Payment of loan by Robert Stuart	4,000.00

Total amount of moneys received or collected	26,702.85
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She asks to be credited with the following sums, paid out as per receipts exhibited:

1923

Dec.	14. L. D. Galbraith, dentist bill in Kansas City	80.00
	14. Grayhorse Store, half bill for 3 months	290.65
	14. Ralph Sanitarium, expenses in Kansas City for treatment	50.00
	18. Don Dickerson	10.00
	18. McLaughlin & Co., groceries	5.20
	18. Casteel Produce Co., turkey for Thanksgiving	8.50
	19. Don Dickerson, Christmas allowance	60.00
	21. B. B. Ralph, expense in Kansas City	34.93
	31. Don Dickerson, cash	5.00

1924

Jan.	2. G. & G. Store, one-half cost of blanket and hat	22.50
	2. Don Dickerson, cash	20.00
	3. Don Dickerson	25.00
	4. Pickens Department Store, for Eva Starr, credit extended at request of Judge Humphrey	316.75
	4. Big Hill Trading Co., one-half authorized credit 3 months	625.00
	4. Star Taxi, taking wards to Grayhorse	10.00
	8. Liberty National Bank to take up notes for money borrowed	67.50
	16. Western Union, money wired to Oklahoma City for Don	25.00
	17. Grace Bigheart, for money loaned ward	20.00
	18. The Curio Store, merchandise by ward	104.50
	21. J. K. Cooper, taxi to Pawhuska	15.00
	21. Don Dickerson, cash to ward	10.00
	21. Don Dickerson, for room rent in Pawhuska	9.00
	22. Mrs. Atkins, hotel bill	3.00
	22. Fishers Taxi, car to Grayhorse	10.00
	25. Hudson-Essex Motor Co., repairs on car, one-half bill	86.99

1924

Jan.	25. John Sherrill, one-half cost winter's wood bill.....	\$40. 00
	28. Western Union, wired to ward at Oklahoma City.....	20. 00
Feb.	1. Western Union, wired ward at Guthrie.....	10. 00
	2. McLaughlin & Co., grocery bill.....	25. 80
	8. Rex Hotel, room rent.....	2. 00
	14. Quarles Hardware Co., barbed wire and staples for use on Hartzell lease.....	21. 00
	22. Mrs. Lewis Davis, labor bill.....	15. 00
	27. Osage Bank, Fairfax, cash to ward.....	10. 00
Mar.	10. Cash to ward.....	10. 00
Total.....		<u>2, 068. 32</u>

INVESTMENTS MADE FOR WARD

1923

Dec.	12. American National Bank, certificate of deposit.....	14, 000. 00
1924		
Jan.	10. Mary E. Little, real estate loan.....	5, 000. 00
	2. National Building & Loan, installment stock.....	50. 00
Feb.	1. National Building & Loan, installment stock.....	50. 00
Mar.	1. National Building & Loan, installment stock.....	50. 00
Total.....		<u>19, 150. 00</u>

COURT COSTS, COSTS OF ADMINISTRATION, AND
TAXES PAID

1923

Dec.	31. Pat Henry, examining title to lands.....	5. 00
	17. Crozier, J. P., costs Dickerson v. Tayrien for rentals due on land.....	3. 00
1924		
Jan.	2. Walter Gray, attorney fees, State v. Don.....	25. 000
	15. Robert Stuart, one-half attorney fees.....	250. 00
	15. E. Stuart, one-half guardianship fees.....	500. 00
	21. American National Bank, draft drawn for taxes.....	60. 00
	24. Robert Stuart, balance attorney fees, as per court order.....	250. 00
	24. E. Stuart, balance guardianship fees, per court order.....	500. 00
Total.....		<u>1, 593. 00</u>

Feb.	19. W. G. Robinson, contractor, contract price for house built on homestead, as per court order and as approved by M. H. Richisin, Government farmer.....	1, 825. 00
Mar.	3. Chas. Stuart, present guardian.....	1, 000. 00

RECAPITULATION

Total amount of funds received.....	\$26, 702. 85
Paid for living expenses.....	\$2, 068. 32
Investments made for ward.....	19, 150. 00
Court costs and taxes paid.....	1, 593. 00
Paid for improvements on homestead.....	1, 825. 00
Paid to present guardian.....	1, 000. 00
Total disbursements.....	<u>25, 636. 32</u>
Balance cash on hand.....	1, 066. 53

The following is an itemized account of all notes, bonds, accounts, and evidences of indebtedness which are herewith presented for inspection, composing the personal estate of my said wards:

DESCRIPTION	
Certificate of deposit, American National Bank, Pawhuska	\$14,000.00
Real estate loan, Mary E. Little	5,000.00
Real estate loan, Leo Perrior	4,263.32
Real estate loan, Robert Stuart	3,500.00
Real estate loan, G. R. Jackson	3,500.00
Real estate loan, R. H. Stodder	3,500.00
Real estate loan, Martin Carriker	4,000.00
Real estate loan, C. F. Lake	2,000.00
Certificate No. 955, installment stock, National Building & Loan Co., present value	2,309.94
Certificate No. 133, full-paid stock, National Building & Loan	750.00
Certificate No. 55, prepaid stock, National Building & Loan	4,000.00
Total securities	43,323.26
Cash on hand	1,066.53
	44,389.79

Indebtedness to American National Bank for money borrowed, \$3,000, and interest accrued.

All of which is respectfully submitted.

ELIZABETH STUART, *Guardian*.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Elizabeth Stuart, guardian of Don Dickerson, Osage allottee No. 153, incompetent, being duly sworn, says that the foregoing is a full and perfect account of all her dealings and transactions, and of all moneys and effects received and paid out by her on account of said minor ward from December 13, 1923, to the 11th day of March, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said minor ward, on hand the 11th day of March, 1924.

ELIZABETH STUART, *Guardian*.

Subscribed and sworn to before me this 11th day of March, A. D. 1924.

RICHARD C. KIMBROUGH,
Notary Public.

My commission expires February 1, 1927.

In the County Court in and for Osage County, Okla. In the matter of the guardianship of A-she-gah-hre (Robert Ashegahre), No. 646; P. H. Harris, guardian. No. 2279.

EXCEPTION TO REPORT

Comes now J. Geo. Wright, superintendent of the Osage Agency, and shows the honorable court that several items now in the guardian's report should be excepted to for the following good and sufficient reasons, to wit:

1. That the receipts are not attached to the checks which are referred to in the report for goods and merchandise purchased by the said guardian for said ward.

2. That said settlement of account shows that the guardian has expended more than \$1,000 per quarter which is contrary to the act of Congress made and approved for the protection of incompetent, minor, and insane allottees.

3. That no inventory has been filed as required by law showing the amount of personal property in the hands of the guardian belonging to said incompetent allottee during the past year.

4. No bank statement has been attached to or accompanies the settlement of guardian's account showing amount of money and cash on hand on the day said account was made.

Wherefore, J. Geo. Wright, superintendent of the Osage Agency, prays the judgment of the honorable court.

J. GEO. WRIGHT,
Superintendent Osage Agency.

STATE OF OKLAHOMA, *County of Osage, ss:*

To the judge of the county court of said county: The undersigned, guardian of Ashegah-hre (Robert Ashegahre), Osage allottee No. 646, incompetent, would respectfully submit to the court the following report of his acts and doings as such guardian from March 27, 1923, to March 1, A. D. 1924. He charges himself with the following, to wit:

1923		
June	22. Check from Osage Indian Agency of balance on hands at time of appointment.....	\$10, 429. 60
Aug.	27. Rental on lease by J. E. Mavity.....	100. 00
Sept.	21. Return of money loaned to Henry Pehsemoi, his son for Colorado trip.....	80. 00
	21. Annuity check from Osage Indian Agency.....	4, 000. 00
Nov.	3. Interest on individual money from agency.....	119. 35
	3. Check of O. L. Barlow, guardian of Susan Kilton, to pay car expense.....	60. 00
	26. Rental on land leased.....	140. 00
Dec.	21. December annuity payment from agency.....	1, 200. 00
1924		
Jan.	9. Rental on land.....	100. 00
	9. Interest on certificate of deposit.....	87. 50
	14. Money received because of Mosier decision.....	4, 207. 45
Feb.	13. Balance in account at agency not turned over at time of appointment.....	40. 00

Total amount received..... 21, 263. 90

He asks to be credited with the following sums, paid out as per receipts exhibited:

1923		
June	23. Allowance, Robert Ashegahre.....	\$15. 00
	25. Allowance, Robert Ashegahre.....	15. 00
	25. Allowance, Robert Ashegahre.....	15. 00
	29. Mathews, Wilson & Co., groceries for period ending June 30, 1923, authorized by Osage Agency.....	599. 80
July	2. Clower & Burt, allowance for water.....	1. 75
	2. Robert Ashegahre, allowance.....	15. 00
	3. Robert Ashegahre, allowance.....	15. 00
	9. Robert Ashegahre, allowance.....	15. 00
	14. Robert Ashegahre, allowance.....	15. 00
	16. Robert Ashegahre, allowance.....	15. 00
	16. Robert Ashegahre, allowance.....	15. 00
	19. J. E. Brannon, mowing lawn.....	5. 00
	21. Robert Ashegahre, allowance.....	15. 00
	28. Robert Ashegahre, allowance.....	15. 00
	28. Robert Ashegahre, allowance.....	15. 00
	30. Robert Ashegahre, allowance.....	15. 00
	30. National Bank of Commerce, Hominy, revenue stamps on deed from Wah-sho-shah.....	6. 00
Aug.	6. Oscar Tabbynanaca, labor for himself and wife, out of funds other than allowance as per court order of Aug. 4, 1923.....	90. 00
	6. Robert Ashegahre, allowance.....	15. 00
	3. City clerk, water bill.....	1. 00
	8. Robert Ashegahre, allowance trip to Colorado.....	275. 00
	8. J. H. Copeland, salary for driving car for one month from July 17 to Aug. 17, 1923, as authorized by Osage Agency.....	125. 00
	7. Petty Motor Co., gas.....	32. 52

1923		
Aug.	21. Ashegahhre, allowance wired to Colorado Springs.....	\$51.23
	21. M. K. T. R. Co. tickets for his two boys.....	61.60
	23. Robert Ashegahhre, expense getting boys home from Colorado Springs.....	50.00
	28. National Bank Commerce, Hominy, certificate deposit.....	5,000.00
	21. County treasurer, taxes on land, Mar. 22, 1919.....	153.28
	27. Robert Ashegahhre, rental money from J. E. Mavity.....	100.00
	10. Thomas Leahy, court cost, No. 2279.....	27.50
Sept.	4. Robert Ashegahhre, to buy school books and supplies for boys, authorized by agency.....	50.00
	10. Robert Ashegahhre, allowance.....	15.00
	15. Robert Ashegahhre, allowance.....	15.00
	17. Robert Ashegahhre, allowance.....	15.00
	22. Ashegahhre, allowance.....	15.00
	22. Ashegahhre, allowance.....	15.00
	22. Hominy Light & Gas Co., gas.....	3.60
	24. Ashegahhre, allowance.....	10.00
	24. Hominy Trading Co., trading allowance.....	282.20
	24. National Bank of Commerce, time deposit.....	6,000.00
	27. Robert Ashegahhre, allowance.....	20.00
	27. Petty Motor Co., garage bill.....	48.69
	28. Ashegahhre, allowance.....	50.00
Oct.	3. R. P. Williamson, for horse.....	75.00
	5. Matthews Wilson & Co., merchandise.....	17.90
	8. Robert Ashegahhre, allowance.....	15.00
	6. Hominy Telephone Co.....	2.00
	10. Robert Ashegahhre, allowance.....	5.00
	12. Earl Jenkins, driving car to Indian village.....	2.00
	13. Ashegahhre, allowance.....	10.00
	15. Hominy Electric Light & Power Co., light.....	8.64
	15. Robert Ashegahhre, allowance.....	15.00
	15. P. H. Harris, special fee, guardianship as per court order, Sept. 12, 1923.....	200.00
	17. Robert Petsemoie, allowance.....	10.00
	18. City clerk, water.....	3.10
	19. National Bank Commerce, money advanced.....	20.50
	19. Joseph L. Bird, money borrowed for car repairs.....	5.00
	20. Ashegahhre, allowance.....	5.00
	23. Ashegahhre, allowance.....	15.00
	24. Ashegahhre, allowance.....	10.00
	27. N. S. Lauderdale, 1 ton hay.....	15.00
	27. Ashegahhre, allowance.....	5.00
	29. Ashegahhre, allowance.....	10.00
	29. J. L. Colbaugh, authorized by Ashegahhre.....	15.00
Nov.	3. Ashegahhre, allowance.....	5.00
	5. Hominy Light & Gas Co., gas.....	8.40
	5. H. H. Shroeder, horse feed.....	17.00
	5. Ashegahhre, allowance.....	15.00
	5. Hominy Telephone Co.....	2.90
	7. Ashegahhre, allowance.....	5.00
	10. Ashegahhre, allowance.....	10.00
	7. Petty Motor Co., storage and gas.....	63.41
	7. Frank E. Ransdell, special attorney fee court cost.....	150.00
	4. City of Hominy, water.....	1.45
	10. Cash Noel, pasturing horse.....	5.00
	8. Robert Ashegahhre.....	10.00
	15. Allowance.....	15.00
	17. Allowance.....	15.00
	19. Allowance.....	15.00
	24. Allowance.....	20.00
	24. Allowance.....	15.00
	26. Allowance.....	15.00
	27. Allowance.....	65.00
	28. Allowance.....	20.00
	30. Allowance.....	10.00
Dec.	1. Allowance.....	35.00

1923		
Nov.	24. Dr. Frank W. Acker, treating Homer	\$15. 00
Dec.	4. Allowance	45. 00
	6. Shroeder & Pearson, horse feed	7. 50
	8. Allowance	15. 00
	5. Thomas Leahy, court cost	56. 65
	11. Allowance	15. 00
	12. Allowance	15. 00
	13. Bringing in hogs, Ben Sparks	1. 00
	13. Hugh Housley, six hogs	14. 25
	14. Hominy Telephone Co.	2. 30
	15. Allowance	15. 00
	14. Hominy Electric Light & Power Co.	15. 41
	18. Allowance	30. 00
	21. Allowance	50. 00
	20. E. D. Roberts, salary driving car	71. 70
	24. Allowance	15. 00
	24. Earl Jenkins, driving car	5. 00
	22. Hominy Trading Co.	155. 95
	22. Matthews, Wilson & Co.	350. 33
	31. Allowance, account	50. 00
	31. Allowance	15. 00
	31. Allowance	15. 00
	31. H. H. Brenner	10. 00
Jan.	3. Allowance	15. 00
	3. Hominy Light & Gas Co.	28. 50
	4. S. Gordon, merchandise	4. 45
	5. Allowance	15. 00
	7. Allowance	10. 00
	10. Hominy Grain Co., feed	6. 70
	10. Allowance, casing for car	47. 50
	10. Allowance	15. 00
	14. Allowance	15. 00
	9. Maxwell & Son, milk	7. 80
	16. O. L. Shoup, livery	29. 50
	16. J. W. Young, court order, July 27, 1923	40. 00
	16. National Bank of Commerce, court order, July 27, 1923, unrestricted funds	1, 186. 50
	14. C. H. Stenger & Co., pair of glasses	25. 00
	16. E. D. Roberts, driving car	40. 00
	16. Allowance	20. 00
	16. Claude Dowell, livery, court order July 27, 1923	24. 00
Jan.	16. W. L. Hays, court order Jan. 16, 1924, old claim	17. 50
	16. T. F. Nelson, court order Jan. 16, 1924, old claim	30. 00
	16. Robinson Mercantile Co., Jan. 16, 1924, old claim	324. 50
	16. Petty Grocery Co., Jan. 16, 1924, old claim	46. 70
	16. Clarence Cope, Jan. 16, 1924, old claim	29. 00
	16. J. F. Steller, Jan. 16, 1924, old claim	33. 00
	16. Matthews, Wilson Co., Jan. 16, 1924, old claim	491. 90
	16. Matthews, Wilson Co., Jan. 16, 1924, old claim	164. 40
	16. Hominy Telephone Co.	2. 30
	16. Maxwell & Son, court order, Jan. 16, 1924, old claim	23. 80
	16. Henry Hays, court order, Jan. 16, 1924, old claim	42. 00
	16. Mortenson Sales Co., court order, Jan. 16, 1924, old claim	22. 50
	16. H. H. Schroeder, court order, Jan. 16, 1924, old claim	53. 65
	16. Joseph Mitchel, court order, Jan. 16, 1924, old claim	20. 13
	16. John H. Copeland, court order, Jan. 16, 1924, old claim	18. 00
	16. Volney Jones, court order, Jan. 16, 1924, old claim	5. 00
	16. Hominy Trading Co., court order, Jan. 16, 1924, old claim	20. 00
	16. Elmer Dewit, court order, Jan. 16, 1924, old claim	37. 00
	16. Harper Scales Co., court order, Jan. 16, 1924, old claim	4. 72
	19. Hominy Electric Co., lights	14. 65
	21. Ashgahhre, allowance	15. 00
	21. Ashgahhre, feed for stock	30. 00
	19. Allowance	15. 00

1923		
Jan.	21. Allowance.....	\$100.00
	26. Allowance.....	25.00
	28. Ashegahhre, allowance, butchered hog.....	25.00
	26. Allowance.....	15.00
	26. Allowance.....	15.00
Feb.	1. Allowance.....	30.00
	2. Allowance, trip to Claremore.....	50.00
	9. Allowance.....	30.00
	13. Allowance.....	15.00
	16. Allowance.....	15.00
	16. Allowance.....	15.00
	19. Allowance.....	15.00
	21. Allowance.....	15.00
	27. T. A. Summers, driving car.....	4.50
	27. Allowance.....	15.00
Mar.	1. Allowance.....	15.00
Total amount paid out.....		18,786.74
RECAPITULATION		
Total amount received.....		21,263.90
Total amount paid out.....		18,786.74
Balance due.....		2,577.16
Total invested in security.....		11,000.00
Payment of old claims.....		2,715.20
Other expenditures not properly chargeable to unrestricted funds.....		593.41
Total paid out not chargeable to unrestricted funds.....		14,308.61
Total paid out of unrestricted funds.....		4,478.13
Annual allowance.....		4,000.00
Other moneys received which are unrestricted.....		4,894.30
Total amount of unrestricted funds.....		8,894.30
Unrestricted funds not expended.....		4,416.17
Most of the first quarterly allowance of my ward was hypothecated before his funds were turned to me.		
The following is an itemized account of all notes, bonds, accounts, and evidences of indebtedness, which are herewith presented for inspection composing the personal estate of my said wards.		
Aug. 28, 1923.	Certificate of deposit in National Bank of Commerce (5).....	\$5,000
Sept. 24, 1923.	Certificate of time deposit, National Bank of Commerce, Hominy (5).....	6,000

All of which is respectfully submitted.

P. H. HARRIS, *Guardian*.

STATE OF OKLAHOMA,

County of Osage, ss:

P. H. Harris, guardian of A-she-gah-hre (Robert Ashogahre), Osage allottee No. 646, incompetent, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all moneys and effects received and paid out by him on account of said incompetent, from March 27, 1923, to the 1st day of March, A. D. 1924, and of all moneys, notes, bonds, accounts, and evidences of indebtedness, composing the personal estate of said incompetent on hand the 1st day of March, 1924.

P. H. HARRIS, *Guardian*.

Subscribed and sworn to before me, this 6th day of March, A. D. 1924.

Notary Public.

My commission expires December 1, 1926.

In the county court in and for Osage County, State of Oklahoma. In the matter of the guardianship of Nah-sah-hah-me, Osage Allottee No. 438. No. 1394.

APPLICATION FOR ATTORNEY FEES AND FOR EXTRAORDINARY FEES IN THE GUARDIANSHIP

Elmer J. Black, the guardian, appears in person and acts as his own attorney; the superintendent of the Osage Indian Agency is present by J. M. Humphreys, probate attorney.

Elmer J. Black is sworn to speak the truth, the whole truth and nothing but the truth and testifies as follows:

Mr. HUMPHREYS. You may make your statement into the record.

Mr. BLACK. This guardianship is for the management of two full Osage estates, and besides the two estates it is gradually accumulating. She has \$50,000 accumulated estate, and of course caring for two estates and accumulated estate takes a good deal of your time to keep the interest collected up and true, and keep the money safely invested takes a good deal of time, and I find it is customary to allow in court—and it seems to be with the general approval of the agency—\$250 for one estate, and in this there is two, and just under the circumstances the fee would be \$500, and I have no attorney other than myself. They allow \$150 for an estate, and that were \$300, and I feel that \$1,000 for the entire services in that entire estate would be very satisfactory.

Q. Is that all?—A. Yes; I think that is enough. Of course, the court understands the duties and the responsibility and the work. We have to be responsible for the loans and a good many things and the taxes and getting the interest, and it seems like there is first one thing and another to do all the time. It takes a great deal of time and one's attention.

Mr. HUMPHREYS. Now, you say \$50,000 has accumulated in this estate?

A. Yes; about.

Q. In cash?—A. No; in real estate mortgage securities and some bonds and some cash.

Q. About how much cash?—A. About \$9,000 cash.

Q. How much—about how many bonds?—A. About \$8,000.

Q. How long have you been guardian for Nah-sah-hah-me?—A. About four years.

Q. And how much money or what accumulation had she at the time you were appointed guardian?—A. Didn't have any.

Q. No accumulation at all?—A. No, sir—you mean accumulate. Ever since I been guardian I been accumulating to accumulate this estate. Of course, she had her regular Osage property.

Q. Do you mean that is money you accumulated or she inherited?—A. No; she inherited before I was guardian; before my time.

Q. Before your time?—A. Yes, sir.

Q. Just state to the court what you have done with the money you received; how much real estate you have bought.—A. No real estate.

Q. You have bought no real estate?—A. No; I invested in first-mortgage securities and bonds.

Q. How much have you in first-mortgage securities?—A. I would have to look it up; the reports show that.

Q. I am asking you.—A. I guess about \$20,000 or \$25,000.

Q. And now, what extraordinary services have you rendered for your ward?—A. Getting these loans and looking after them.

Q. You are claiming extra fees for services as guardian?—A. Well, for extra services as guardian; of course, that extra outside of two Osage allotments; of course, the old lady lives in the camp, and, of course, she has to have a good deal of personal supervision, and I go quite frequently to see she gets what she wants, and they are after you and after you all the time, and I figure that goes in the regular work; now I have not had very much to do outside of some improvements. I made some little improvements during the time of this report; not a great sight of improvements, but I had to look after her personal affairs. She has notions; now she'll get a notion; she got a notion a while ago and got a lot of old hogs out there, and got the notion she would raise hogs in the camp, and I couldn't talk her out of it, and couldn't get her to sell them, and if I'd try to she would run to the agency and things like that. I just had to get along the best I could. The neighbors all complained about them making a stench out there, and I would have to move them and make new pens and shift them around, and attend to all

that by main force and strength; and they couldn't get along with her, the neighbors out there, and lots of things like that.

Q. That is one thing; what is another thing that you have done?—A. Well, of course, you mean extraordinary?

Q. Sure.—A. Well, extraordinary services; I call extraordinary services to take care of the accumulated estate, outside of the two estates now; she has \$50,000 outside.

Q. Didn't you figure that is what you would do when you were appointed guardian?—A. Sure; I figured I would do that; but that's no reason I shouldn't have pay for it.

Q. I am talking about what you get every year.—A. The court allows \$250 for one estate, then there is all this accumulated estate of \$50,000. I don't think I ought to be made to take care of that for the \$250.

Q. You knew that when you were appointed, didn't you?—A. Yes; I knew that when I was appointed, of course, I knew that, but I didn't think it would be all my lifetime for that.

Q. Are you tired of your duties?—A. Not a bit of it.

Q. What extraordinary services have you rendered?—A. I should think that is enough.

Q. How much extraordinary services have you performed?—A. That is enough.

Q. How much extraordinary services have you rendered in this guardianship?—A. That—

The Court. Answer the question, Mr. Black.

A. Guardians get \$250; that is, \$500 for the two estates, full estates, and I am my own attorney, that's \$150 in attorney fees for each; that would be \$800; and now for this accumulated estate of \$50,000 it seems to me \$200 on top of that fee is reasonable.

Q. Well, I want to know what you did for that—how many hogs down in that pen?—A. This has nothing to do with the hogs.

Q. Oh, I thought that was it.—A. It never run in my mind to charge for that; I was just telling you that was one of my duties as guardian.

Q. Did you move them?—A. Yes; I moved them—had it done.

Q. And you paid the other fellow for moving them?—A. Sure.

Q. I see—how much?—A. Eight or ten dollars, I think it cost about that much; of course we got rid of them now.

Q. Can you think of anything else you have done in the way of extraordinary service for her, this Indian woman that you are asking \$200 for looking after.—A. Well, of course, I have had a good deal of bother collecting rent and money.

Q. Is that not part of your duties under your appointment.—A. Of course, but these extraordinary services, when a fellow gets these big immense sums of money piled to take care of, it takes lots of time.

Q. What have you done for your ward for this \$500.00 that you expect the court to give you \$500.00?—A. Well, I have paid her every week, and I paid her phone and her gas bill and paid her water bill and paid her electric light and I have paid her bills and her grocery bills and every kind of a bill, just the year around, and paid her every week.

Q. How much time did it take every week?—A. They—well it takes attention a good deal of the time.

Q. About how much time does it take to go around and pay her grocery bill and her light bill?—A. Well, of course after we get the checks, I have to pre-ambulate around and get the bills together and there is so much you have to have in mind all the time and the worry of it, and there is dry goods bills has to be paid for and grocery bills and you are bothered by all kinds of people trying to sell all kinds of things, automobile salesmen and salesmen for this and salesmen for that, just after you all the time.

Q. How much time have you been devoting to that?—A. As little as I have to, but you have to spend a whole lot.

Q. This is what I am trying to get at: Does it take your whole week's time to write checks and pay bills?—A. No; it's not a question of time, it's the kind of things you have to do; and this land, now—I have charge of all the old lady's land, and she is after me all the time for one thing and another and things she wants, and you have to hear about that and talk her out of things.

Q. You knew that when you were appointed?—A. Sure, I knew that; of course I knew that.

Q. You didn't object to that—you swore to do that?—A. Yes; and I'll swear to that now if you want me to.

Q. What I want is to find out what you did for this money. That is a lot of money, \$1,000 for taking care of one old woman.—A. One old woman is a very small part of it; but when you find about \$15,000 or \$20,000 coming into your hands, fresh money, and \$50,000 accumulated money, that, I think, should be charged on. Any business man would tell you that I ought to have something for looking after that.

Q. You don't have to hire a clerk to help you?—A. Of course you could use one sometimes, but of course, as I told you, I do that work myself and do it the best I know how.

Q. You pay the electric-light bill every month?—A. There ain't no electric lights out there; I pay the gas bill.

Q. What other bills do you pay?—A. Well, just different bills that come in all the time.

Q. What are they?—A. Grocery bills and gas bills.

Q. Pay those once a month?—A. Yes, sir.

Q. And here is a repair bill; how often do you pay that?—A. Well, whenever it would come in.

Q. You pay the bills once a month?—A. I pay oftener than that as a rule; lots of the bills I pay before, not once a month.

Q. What did you pay before?—A. Well, when they were presented before I paid them, and drug bills and one thing and another, and then they are always coming in with some kind of a stalling proposition that they have to have money; she gets so much money every Monday and she comes back on an average of twice a week and wants more money; comes before breakfast and comes right up the steps and knocks on the door, and of course wants you out in front and you have to go out there and you have to fight them off, and if you come through to keep peace in the family the court gets after you and the agency gets after you, and you tell them its against the rule and against the law, but that don't make any difference with them when they get their back up and want money, and that's not the case only once but often; sometimes she will get along peaceable and nice for a long time and then she gets fussed up, somebody wants to work some money out of her and they stuff her up and she comes back for more money and more money, and maybe I'll give her an extra \$10 and she will go and get it cashed, and in a day or two she will be back for more money.

Q. About every two or three days; that comes pretty often.—A. Yes; it comes pretty often.

Q. Now, let's see the bills you pay. There is the gas bill, once a month?—A. Yes, sir.

Q. And the grocery bills.—A. Yes; the grocery bill.

Q. And the water bill and the drug bill.—A. Yes; the drug bill and the telephone bill; no water bill.

Q. You could pay that by writing four checks, couldn't you?—A. I could pay those by writing four checks.

Q. I believe that would be all but the repair bill.—A. Yes; and every once in a while she wants a car.

Q. You have to do that every month?—A. I do that every month; I do that whenever the bills come in; I look them up and check them up and draw the checks in payment.

Q. You have to do that every month?—A. Certainly; all the time. What do you mean by that?

Q. I was afraid you were overworking, is all.—A. Maybe you are used to doing more work than some of us up in Osage County Agency.

Q. Maybe so. Now, you stated all the work you have done, then, for the \$500, and stated what you have done was moving the hogs for \$200, now tell about the \$300. How do you claim attorney fees when you are representing yourself?—A. Well, I claim it this way: What those additional fees are for is making the report and attending to the legal matters. I am an attorney myself, and I can attend to it better than anybody else, because I know things about it nobody else would know, and I can do it better than to have somebody else fooling around, and there are statements that the guardian has to make to the court that I can make better myself than to bother with somebody else.

Q. Do you know if they have ever allowed an attorney fee for a man that has ever acted as attorney in this way?—A. I think it has always been done; the court has always allowed extra services.

Q. Name one case where an attorney has acted as guardian and his own attorney?—A. Its been allowed to me.

Q. By whom?—A. The former judge.

Q. As attorney fee?—A. Well, he has allowed me services in lieu of it; there's been extraordinary services allowed me because I did this work.

Q. Well, Judge, I think \$500 will pay a man pretty well for what you have done. I am not objecting to that but I am objecting to more.—A. Now, if the court please, this has all been brought out here by these questions; four years ago when I took this estate it didn't have a dollar in it, and now by the pains I have taken and the work I have done and the care and attention I have given this estate I have been able to accumulate now by the painstaking work of the guardian—I have been able to accumulate \$50,000; with that accumulated amount to take care of figure what that would be, what per cent, figured on a per cent basis, how much would a person be entitled to on a very small per cent for taking care of that. If Judge Humphreys, in a joking manner, could pretend to the court or anyone else that \$500 is enough for that kind of service; here the other day I made a check for \$1,400 for income tax for this woman's estate, and now I stay here and work and take care of her estate a whole year and make out the reports and be subjected to this kind of questions and ask me to come up and take \$500 for that kind of service; if your honor please, it is ridiculous, and my respect is jarred for anyone to ask a fellow to give that kind of services for that kind of pay.

Mr. HUMPHREYS. If your honor please, the joke, if any there be, is on the man who comes up and asked for \$200 for moving those hogs, the property of that old woman for whom he is guardian, and I think it is preposterous for a man to come in and ask for a sum of that kind for those services, especially for a man of his education and intelligence and standing to come in and ask the court for \$200 for extraordinary fees; now as to the law of compensation for attorneys, I think the law is well established; I don't know of any single exception where the law is different; in a case where the guardian is acting as his own attorney he is not entitled to attorney fees; I think every member of the bar agrees with me on that point.

Mr. SHINN. The rule as laid down by the Supreme Court where an attorney serves as guardian or administrator and acts as his own attorney in those matters, the rule is against allowing him for the legal services; he can employ some one else, but if he does the service himself he can't collect for it.

Judge STURGELL. I think that is the law; as to this particular case heretofore there has been a rule that I made and the attorneys accepted that a fee of \$250 be allowed for one estate in a guardianship, and in this estate there were two, and each year the estate has grown until he has had to loan money out and render extraordinary services more than was anticipated in the appointment because the estate was growing so fast, and I think that was what I based the fees on.

Mr. HUMPHREYS. I am not objecting to \$500.

Mr. BLACK. Now, in answer to that new proposition, I don't think that's the law; I think this matter is wholly within the discretion of the court and that the court can allow, in his discretion in his court here, a commission with respect to the services rendered; you take into consideration the work in this guardianship, the benefit that these services have been to this estate here; now you take this estate, if your honor please. This is one guardianship that's got money in it, actually \$50,000, accumulated by the person having charge and supervision of it, and then come in and say, just because he don't have some attorney assisting you; insist that you can't be allowed that commission for services. Why its unreasonable. Of course, in my case I have no prejudice against any attorney in this matter, but this has been my experience with attorneys; that since I am an attorney myself and have this business to tend to, I can do it more satisfactory and save time to myself too, than to have to go and ask an attorney to do a lot of little things just to get a fee. I think it is a great deal more against an attorney just to get some attorney and pay him a fee to do little services when he could do them better himself than it would be to get pay for his services. Of course Judge Sturgell, who just resigned, understood this matter and allowed me for the two years I have had charge of this estate, allowed me \$800 for that service and the estate has continued to accumulate, and I received \$800 last year, and I certainly am entitled to as much this year, if not more.

Judge BLACK. The accumulation is money you received from the agency, is it not?

A. Bonus money that has been saved.

Q. Through no effort on your part; nothing you have done except accept the money coming from the agency to you.

The COURT. The court excepts and objects to the payment of more than a \$500 fee in this case; the court realizes that this is a large estate, and it is his opinion that a fee of \$750 is a just and reasonable fee in this case, and that will be the order of the court.

Judge HUMPHREYS. To which the superintendent of the Osage Indian Agency, J. George Wright, objects and gives notice of appeal to the district court of Osage County.

Mr. HUMPHREYS. I would like to ask Mr. Black another question or two.

Q. Judge Black, in the handling of Nah-sah-hah-me, I will ask if you did not buy six or eight thousand dollars worth of school bonds that were not approved by the court?—A. How is that?

Q. I will ask if, in the handling of Nah-sah-hah-me's estate, you did not buy six or eight thousand dollars worth of school bonds that were not approved by the court?—A. Yes; I bought some school bonds. The court never approved of them. Of course, I filed it in the report. I remember how I came to buy those. It was late in the fall of the year. I knew I should have got the approval of it, but it has been my policy not to have too much money in the bank the first of the year when the tax goes on; taxes are pretty steep in this county, and, of course, I like to get it invested in something nontaxable. That was just before the holidays was why I was trying to get some money invested. I had quite a lot on hand, and I went to the Bank of Commerce down here and asked for securities and they didn't have any securities then, and when they did get them it was so late that I recognized that we wouldn't have time to get it up in court, and it was the kind of securities the Federal law advised and favored, and Mr. Dildine went over the matter and got me the bonds and told me they were absolutely gilt-edge bonds.

Q. And these bonds—school bonds—never were approved by the judge of the county court?—A. Well, of course, I didn't have time to submit them to him for approval before I bought them. As I understand the Federal law, I was permitted to invest my guardianship funds in them; the court and the agency was fussing about what you did; the court was contending you could invest your money in first-mortgage securities, and the agency was contending you couldn't do that. Well, the guardian was in this position: If you went ahead and invested in first real estate mortgage securities, then the agency wouldn't turn over any money, and if you went ahead and invested the way the agency said the court might not approve it, and between the department and the court you can see about what a man was up against. I had the bank look for an investment for me, and after I went back they recommended the investment, and we put it over, and I think it is a good and proper investment. Now, I had it in my report a time or two, and judge spoke about it and didn't like it, and the last time he didn't say so much about it. I told him I was going to change the bonds my last report and called attention to it. He said, "I am going out pretty soon," and we sort of passed it along. I was going to cash those bonds out, but I didn't suppose there was any very great rush about it, as the estate was getting the benefit of a first-class security.

Q. Is that some of the extra services you have rendered the last year?—A. Well, that is one of the things I did; yes.

(Witness dismissed.)

In the county court in and for Osage County, State of Oklahoma. In the matter of the guardianship of A She Gah Ire, incompetent. No. 2279

Now, on this 8th day of August, 1923, this matter came on for further hearing upon the application of the guardian for an order authorizing him to pay attorney fees and for an order for special fees for the guardian; the petitioner being present in person and by his attorney, Frank E. Ransdall, and the Osage Indian Agency being present by J. M. Humphreys, the following testimony is taken:

W. H. Bingham being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. RANSDALL:

Q. State your name.—A. W. H. Bingham.

Q. Are you a practicing attorney of Osage County, Okla.?—A. Yes, sir.

Q. How long have you practiced law in Osage County?—A. Nearly five years.

Q. Have you practiced law in the county court of Osage County?—A. I have.

Q. Have you had occasion to learn—do you know what fees are charged by attorneys in Osage County in probate matters?—A. Yes; in a way.

This is a guardianship case, and I have a claim filed for certain services rendered, which I will read:

In the county court of Osage County, Oklahoma. In the matter of the guardianship of A-she-gah-lire, Osage allottee No. 646, incompetent. No. 2279.

APPLICATION

Comes now P. H. Harris, the duly qualified and acting guardian of A-she-gah-lire, Osage allottee No. 646, incompetent, and respectfully shows to the court that the estate of his said ward is indebted to Frank E. Ransdall, an attorney, for legal services in this case as follows, to wit: Preparing and filing petition for the appointment of guardian on November 13, 1922, and hearing and acting as attorney in all subsequent proceedings in said case up to 23d day of June, 1923, the date that the funds of said ward were turned over to said guardian by the Osage Indian Agency, which services are more fully described in the claim of Frank E. Ransdall, attached hereto as a part hereof; that a reasonable sum for said services is the sum of \$500.

Wherefore this petitioner prays that he be authorized to pay said claim and to use therefore the funds of said ward, and that the same be credited to his account upon payment.

P. H. HARRIS, *Guardian*.

Q. I will ask you, Judge, for services rendered as set forth, what would be a reasonable fee for services of that kind?—A. Of what does the estate consist?

Q. One share of Osage trust property, of course, and also trust funds and also inherited funds that will come into the hands of the guardian in addition to that one share.—A. Well, I don't think a fee of \$500 would be excessive.

Q. You are of the opinion that would be a reasonable fee?—A. Yes, sir.

Mr. HUMPHREYS. If the service was rendered for the guardian alone, do you think the estate should be charged with it?

Mr. RANSALL. Objected to; that is for the court to pass on.

Mr. HUMPHREYS. Question withdrawn.

(Witness dismissed.)

Pat Harris, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. RANSALL:

Q. Your name is P. H. Harris?—A. Yes, sir.

Q. You are the guardian in this A-she-gah-lire case?—A. Yes, sir.

Q. Now, I will ask you, Mr. Harris, to state whether or not this Indian solicited you to enter into this guardianship proceedings, asked you to accept the guardianship?—A. He did.

Q. Is this from any solicitation on your part, or did he solicit you?—A. He solicited me.

Q. I will ask you if at the time he solicited you—what did you do as to having an attorney get up the papers?—I told him we would have to have an attorney to get up the papers.

Q. Did you come to me then?—A. Yes, sir.

Q. He signed this petition, did he not?—A. Yes, sir.

Q. He knew of my employment in the case, did he?—A. Yes, sir; he made all the trips with us, possibly 10 or 15 trips with us.

Examination by Mr. HUMPHREYS:

Q. Did you and the attorney have any agreement as to the amount of money he was to be paid for his services?—A. Nothing was said about it.

Q. All the services for which compensation is asked was before you were appointed guardian?—A. As I understand, I was appointed a few days after the application was made and the agency filed an application to have it set aside, he had this brought up from the first beginning.

Q. How long a time was that?—A. Something like six months; I don't remember the date.

Q. And then the fact is he was really representing you?—A. Yes; in the guardianship suit.

Q. But the suit was in reference to the guardianship?—A. The only question was the Indian wanted me appointed and the office didn't.

Q. You were appointed and an appeal was taken, and you were fighting in the district court to retain it?—A. I wouldn't say that; the Indian wanted it.

Q. Were the Indians benefited by it?—A. Well, they wanted it.

(Witness dismissed.)

Frank E. Ransdall, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. HUMPHREYS:

Mr. RANSDALL. I have, since testifying in court the other day, figured over the statement of my claim filed in this case and have tried to arrive at an estimate of what my services were really worth between the time of the first hearing in the county court and the second hearing. I think a reasonable estimate of the services, a reasonable division, would be at least nine-tenths of the work was done after the first hearing in the county court and approximately two-thirds after the second hearing in the county court.

Q. All this work was done that you have testified to to retain Pat Harris as guardian in those two cases?—A. Yes; it was a fight over the sustaining of the guardianship.

Q. You were undertaking as an attorney for Pat Harris to retain him as guardian?—A. And also the Indian.

Q. How were you retained by the Indian?—A. They knew of my employment and it was with their consent.

Q. Did they contract with you?—A. They signed the petition I prepared and I was representing them in the hearing as well as P. H. Harris.

Q. Then practically all the services which you were asking this fee for, was done before the court finally passed on the case, the district court, and remanded it back here; is that not true?—A. No; considerable work was done after that.

Q. What was done that was for the benefit of the estate?—A. I attempted to get the money turned over.

Q. What benefit was that to the Indian; he got money from the agency just the same as any other estate—did you have to bring suit?—A. No, but I had to make several trips; there were several little matters that wanted attention down there.

Q. And in what way was the estate benefited by that?—A. Well, they represented that much money for the estate.

Q. They had this money at the agency for him?—A. Yes, sir.

Q. They were being paid according to law?—A. They had an allowance.

Q. That is all the benefit that you can say was derived by this estate by virtue of your efforts?—A. The main thing was the establishment of the guardianship and the statements of the incompetent. I believe that was in the petition also, that he might be defrauded.

Q. You mean the money at the agency might be wasted?—A. I am not speaking anything about it; I am stating what the petition said.

Q. Do you know of any place where any waste has occurred?—A. No, sir.

Q. I believe you stated you expect additional fees in this case at the end of the year?—A. Well, whatever it may be worth, this was for the expense up to the time the money was turned over.

(Witness dismissed.)

Mr. RANSDALL. We offer in evidence the petition in this case and also the order appointing guardian and ask that they be made part of this record, and a copy of same are hereto attached, marked "Exhibits A and B," and made a part hereof.

The COURT. I will make an order allowing the guardian the sum of \$300 for his services and \$100 for his expenses, and I will allow the attorney the sum of \$500 for his services.

Mr. HUMPHREY. To which I object for the agency and at this time give notice of appeal to the district court.

(Appealed to the district court and fees reduced in two cases, saving \$1,700.) In the County Court in and for Osage County, State of Oklahoma. In the matter of the guardianship of Bert Tuman, Osage allottee No. 206. No. 1482

HEARING ON APPLICATION ALLOWANCE FOR EXTRAORDINARY SERVICES

Examination by Mr. HUMPHREYS:

Q. Mr. Drummond will you please state to the court what were the extraordinary services you rendered in the matter of the guardianship of Bert Tuman, Osage allottee No. 206, for which you are asking a fee of \$750?—A. This ward, Bert Tuman, is an habitual drunkard and has been ever since he has been in my charge and it is his custom to come to my office very frequently, as often as three or four times a day, and call me over the telephone at all hours of the

day and night, and I have had to frequently go to get him out of trouble and out of jail, all of which is on account of his habit of drinking and the company that he keeps, both among drunk Indians, bootleggers, and disreputable persons; to give him this personal attention required a great deal of my time and he has been very very hard to handle, and I consider a fee of \$750 a very reasonable fee for the estate and the time that I have expended in looking after the property of the ward and his welfare.

Q. How many trips have you made for the benefit of your ward?—A. Well, during that period I have made probably several dozen trips; I have been out to his home several times; I have been called out there, called to police court two or three times, and called to Tulsa to get him out one time.

Q. Does that about cover the work you have done, extraordinary services?—A. Yes, that is about it.

(Witness dismissed.)

G. K. Sutherland, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. HUMPHRIES:

Q. Mr. Sutherland, you may state what services you have rendered of an extraordinary nature.—A. That is for the whole service not just the extraordinary.

Q. How many estates does he have?—A. Two full estates. I will state this, Bert Tuman bothered me considerable; three or four months ago, when he was in jail, I would go and see him. I think Mr. Stuart, before he was appointed, wrote me to see if I could get him out. When he was in the county jail at different times he has called on me, and Mr. Drummond has consulted me several times.

Q. About how many times did you appear in court for him?—A. I remember three times; once he was in and I was over here and he sent for me and I went to the county jail to see him.

Q. You say he has two estates, and under the ruling of the court you would be allowed \$250, and you think \$250 for extra services would be a reasonable fee?

(Witness dismissed.)

Robert Stuart, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by the COURT:

Q. Mr. Stuart, you heard the statement in this case relative to the services rendered by Mr. Drummond as guardian of Bert Tuman?—A. Yes, sir.

Q. On which he has asked fees for services?—A. Yes, sir.

Q. From his statement and from your observation as an attorney and guardian, what do you say as to the reasonableness of the request and the amount of the fee?—A. Well, I think the request is reasonable in both instances, for three reasons. I am personally acquainted with Bert Tuman, and I at the present time have charge of this man, and I find him a very disagreeable and inconsiderate man and a source of constant annoyance to anyone who has charge of him, both as attorney and guardian. He is an habitual drunkard and he gets drunk and stays in that condition, and he is calling you at all hours, day and night; he is a young fellow, very energetic, and calls you one day from one place and another day from another place; he always checks it up to you that he has to have money and is in bad shape, and that is the kind of man he is; and the second reason I would suggest, this is a final hearing of this particular guardian and they are closing this affair and turning him over to the new guardian, and that is an additional reason I think the fee should be more than just the ordinary annual report.

Q. You are now the qualified guardian of this ward?—A. No; my brother, Charles, is the guardian and I am the attorney in the case and have lots to do with it.

Q. You have a full knowledge of the case?—A. Yes; I know it very well.

Q. And you feel that is a reasonable attorney fee for his services?—A. Yes, sir.

(Witness dismissed.)

In the county court in and for Osage County, State of Oklahoma. In the matter of the guardianship of A-she-gah-hre, incompetent. No. 2279

Now on this the 4th day of August, 1923, the above matter comes on for hearing upon the application of the guardian to pay certain claims; the guardian being present in person and by his attorney, F. E. Ransdall; the incom-

petent, A-she-gah-hre, being present in person; the Osage Indian Agency being present by J. M. Humphreys, its attorney, thereupon the following testimony is taken:

P. H. Harris, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. RANSALL:

Q. Your name is P. H. Harris?—A. Yes, sir.

Q. You are the guardian in this case?—A. Yes, sir.

Q. I hand you this application which is presented to the court and ask you if these claims were listed to be paid?—A. Yes, sir.

Q. I will ask you if you have carefully checked over all these claims?—A. Yes, sir.

Q. State whether or not you think they should be paid?—A. I do.

Q. I will ask if you have gone over these claims with the incompetent?—A. Yes, sir.

Q. State whether or not he has requested that they be paid?—A. Repeatedly, he has asked that they be paid, I went over them with him and he insists on them being paid, says they are all the time bothering him about having them paid.

Q. Now, you were appointed some time ago as guardian and the funds were turned over to you about two months ago.—A. This last payment.

Q. This is the first time any claims have been presented and heard by the court?—A. Yes, sir.

Q. You gave notice by advertising, to the creditors did you not?—A. Yes, sir.

Q. And publication was in the Hominy News, where the ward lives?—A. Yes, sir.

Q. Most of those debts were contracted prior to appointment of yourself as guardian?—A. Yes, sir.

Examination by Mr. HUMPHREYS:

Q. Is your ward an incompetent Indian?—A. Yes, sir.

Q. Never has had a certificate of competency?—A. No, sir.

Q. I believe you stated nearly all of these claims were made before you became guardian?—A. Practically all of them.

Q. You don't know anything about their worthiness?—A. Well, I know that money they got at the bank, that is where I trade mostly, I know the money he got there he received.

Q. Are you connected with the bank?—A. No, sir.

Q. Just do business there?—A. Yes, and loaf there a good deal.

Q. Are you in any way connected with Mathews-Wilson & Co.?—A. No, sir.

Q. Have you examined their claim?—A. Yes, and I think the Indian examined them and got what is set out in there.

Q. You have examined all these claims with him?—A. Yes, the fact is he came to me, he knows every one of them.

(Witness dismissed.)

It being necessary to use an interpreter to secure the testimony of A-she-gah-hre, and Susie Killon being present in court and being able to speak and understand both the English and Osage language, is duly sworn to truly and correctly interpret to questions of attorneys from the English language into the Osage language and the answers of the witness from the Osage language into the English language.

Thereupon A-she-gah-hre, duly sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. RANSALL:

Q. What is your name?—A. A-she-gah-hre.

Q. How old are you?—A. Seventy.

Q. What is your post-office address?—A. Hominy.

Q. What is the name of your guardian, if you have one?—A. Pat Harris.

Q. Ask him if he looked over these claims and understands them.—A. Yes; he says he understands them.

Q. Ask him how much he owes Mathews-Wilson & Co., if he knows.—A. He says he don't remember just exactly how much it is, but he says he guess Mr. Treadway put it down on there.

Q. He thought it was all right?—A. Yes, sir.

Q. Did he run an account there a long time?—A. Yes, sir.

Q. Ask him if they ever gave him any cash there, any money.—A. Yes, sir.

Q. About how much cash did he ever get from them, if he knows?—A. He says he don't remember just exactly how much.

Q. Did they pay him in money or by check?—A. They gave him the cash.

Q. Always?—A. Yes, sir.

Q. Does he consider a check cash; if they would give him a check would he consider that cash?—A. He said they gave him a check and he cashed it downstairs.

Q. Now the amount of their bill, their first bill, is \$491.90, and of this \$120 of it is cash.—A. He said that is all right.

Q. Here is another claim to the same company, \$164.35, from December, 1922, to June, 1923; I will ask you if that account is correct?—A. He says he don't know about that one.

Q. He does not know about it?—A. No, sir.

Q. Unless he knows about it he does not want it paid; he wants to be sure about it.—A. He says he doesn't know about that \$165.

The COURT. Account passed for present.

Q. Ask him about this first account, \$491.90; ask him if he wants that paid?—A. Yes, sir.

Q. Here is a note to Matthews-Wilson Co. for \$127; what does he know about that note?—A. He does not know anything about that note.

Mr. HUMPHREYS. The agency objects to the claim.

The COURT. Passed for the present.

Q. Ask him if he owes Claude McDowell anything?—A. Yes, sir.

Q. \$24?—A. Yes, sir.

Q. And he wants it paid, does he?—A. Yes, sir.

Q. Account of Clarence Cope, July 23, \$24; and auto services, Bob Petsemole auto trip to Enid and return, \$29?—A. Yes; he says that is all right.

Q. And he wants it paid?—A. Yes, sir.

Q. Another bill to John Copeland, \$19; balance on trip to Pawhuska, \$4; June 23, \$2; July 11, \$12; trip to Pawhuska, making a total of \$18; ask him if he wants that paid?—A. He says he don't remember owing John Copeland for trips; he never did mention it to him. The agency excepts to the account.

The COURT. Passed for the present.

Q. T. F. Relson, auto livery hire, April 15 to May 10, auto hire, \$30—from Hominy to different places?—A. Yes; that is all right.

Q. He wants it paid, does he?—A. Yes, sir.

Q. N. I. Hays, auto livery hire, Pawhuska and elsewhere, \$17.50?—A. Yes; he said it is all right.

Q. And he wants it paid?—A. Yes, sir.

Q. Hominy Trading Co., \$20. Ask him if that is correct.—A. Yes; that is all right.

Q. He wants it paid?—A. Yes, sir.

Q. Volney Jones, to livery trips to John Oberley's, \$2.50 each, \$5.—A. Yes; that is all right.

Q. And he wants it paid?—A. Yes, sir.

Q. Mortenson Motor Co., \$22.50. Ask him if that is correct.—A. Yes, sir.

Q. And he wants it paid?—A. Yes, sir.

Q. Petty Grocery Co., \$46.70; is that correct?—A. Yes; that is all right.

Q. And he wants it paid?—A. Yes, sir.

Q. Oscar Tabbynanaca, \$90, for work done?—A. Yes; that is right.

Q. And he wants it paid?—A. Yes, sir.

Q. Now here is an account of Elmer Dewitt, livery hire, \$37?—A. He says he just remembers owing Elmer Dewitt \$20, that is all he remembers owing him.

Q. Ask him if he remembers a livery trip to Pawhuska, \$12.50, two trips, and to John White \$4, and to John Shunkah's \$4, and another to John Shunkah's \$4?—A. He said he forgot that; it is all right.

Question. And he wants it paid?—A. Yes, sir.

Q. There is an account here to J. L. Stuller, jitney driver \$33?—A. Yes, sir; he owes that.

Q. And he wants it paid?—A. Yes, sir.

Q. Maxwell & Son \$23.80 for milk?—A. Yes, that is milk and butter.

Q. He wants it paid?—A. Yes, sir.

Q. H. H. Schrader & Co. have filed their claim for \$53.65?—A. Yes; that is right.

Q. And he wants it paid?—A. Yes, sir.

Q. Henry Hays, Hominy, \$42.50, that is another jitney driver?—A. Yes; he says it is right.

Q. And he wants it paid?—A. Yes, sir.

Q. Robinson Mercantile Co., for clothing furnished ward, \$324; ask him if he knows anything about that?—A. That is all right.

Q. Does he want it paid?—A. Yes, sir.

Q. Ask him if he owes the National Bank of Commerce anything; and if so, how much.—A. He says he owes them but he don't remember how much.

Q. Ask if he borrowed money from the bank.—A. Yes; he says he borrowed some money but he don't remember just how much it is.

Q. The note will show what he owes, will it?—A. Yes, sir.

Q. Ask him if he wants the bank paid.—A. Yes, sir.

Q. John Young, another jitney bill, trip to Fairfax to attend the funeral of Henry Roan, \$12.50; trip to Pawhuska to purchase auto, \$12.50; Indian camp, \$5; trip to Wynona, Okla., hunting his boy, \$10. Ask him if he owes that.—A. Yes; he said he did.

Q. Ask him if he wants it paid.—A. Yes, sir.

Q. Now, here are a number of notes to the bank, one for \$280, June 20, 1923, and one note for \$10, June 25, 1923, ask him if he signed those two notes, if he remembers.—A. Yes; he remembers them all and wants them paid.

(Witness dismissed.)

Mr. Treadway, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. RANSDELL:

Q. I see here a claim for Mathews-Wilson Co. for \$164, that was made along this winter and spring from December 6, 1922, to June 22, 1923; that was right recently, just before Mr. Harris took their business over; do you know anything about that claim?—A. That was for merchandise authorized by the guardian; that is the reason it was separate from the other.

Q. He assured you that when he was appointed guardian it would be paid?—A. Yes, sir.

Q. And the account purchased after the man was under guardianship was listed in a separate statement.—A. Yes, sir.

Mr. HARRIS. I will say that after I was appointed guardian the agency wouldn't turn the money over to me and they had to have some place to trade and Mr. Treadway asked me if I would see it was paid and I told him I would.

A-she-gah-hre, recalled.

Susie Killon, interpreter.

Examination by Mr. RANSDELL:

Q. Ask him if he remembers this bill of \$164, it was after a guardian was appointed; he got some blankets and things there?—A. Yes.

Q. He remembers it now?—A. Yes, sir.

Q. And he wants it paid?—A. Yes, sir.

(Witness dismissed.)

Frank E. Ransdall, being first duly sworn to speak the truth, the whole truth and nothing but the truth, testifies as follows:

Examination Mr. HUMPHREYS:

Mr. RANSDELL. My name is F. E. Ransdall; I am attorney for the guardian in the estate of A-she-agh-hre, an incompetent, this is a claim for special services. I will read to the court the claim filed:

In the county court of Osage County, Okla. In the matter of the guardianship of A-she-gah-hre, Osage allottee. No. 646, incompetent, No. 2279.

APPLICATION

Comes now P. H. Harris, the duly qualified and acting guardian of A-she-gah-hre, Osage allottee No. 646, and respectfully shows to the court that the estate of his said ward is indebted to Frank E. Ransdall, an attorney for legal services in this case as follows, to wit: Preparing and filing petition for the appointment of guardian on November 13, 1922, and hearing and acting as attorney in all subsequent proceedings in said case up to the 23d day of June, 1923, the date that the funds of said ward were turned over to said guardian by the Osage Indian Agency which services are more fully described in the claim of Frank E. Ransdall, attached hereto as a part hereof: That a reasonable sum for said services is the sum of \$500.

Wherefore this petitioner prays that he be authorized to pay said claims and to use therefor the funds of said ward, and that the same be credited to his account upon payment.

P. H. HARRIS, *Guardian*.

That is the claim, and I will also offer in evidence the claim attached to the application for special attorney fees of Frank E. Ransdall, same being as follows:

"JULY 26, 1923.

"Bill of Frank E. Ransdall against the estate of A-she-gah-hre, Osage allottee No. 646, incompetent No. 2279. November 13, 1922, to July, 1923, for legal services rendered in the above case as follows:

"Prepared and filed petition for appointment of guardian on 13th, 1922; prepared and caused to be served proper notice and citation for hearing on November 22, 1922; conducted said hearing; prepared and caused to be made and signed order appointing guardian, letters, and bond, and other papers in the case. On December 27, 1922, a motion was filed in this case by the superintendent of the Osage Indian Agency to revoke and cancel the letters of guardianship issued to P. H. Harris, and I prepared for hearing this motion on January 4, 1923, and conducted the hearing; evidence was heard and case argued at length and resulted in the overruling of motion to revoke. The Osage Indian Agency thereafter appealed this case to district court. I made a trip to Pawhuska for the purpose of and got this case set for trial and hearing on February 2, 1923; at which time the motion filed by me to dismiss appeal was heard and overruled, and said cause was continued for further hearing and for trial, and on February 17, 1923, the case was heard in the district court, and after considering the evidence the court revoked the letters of guardianship theretofore issued to P. H. Harris and the case was remanded to county court for a new trial. On March 12, 1923, I made a trip to Pawhuska for the purpose and got the county court to set the case for trial on March 19, 1923; I caused proper notice and citation to be issued for trial on March 19, 1923; I caused proper notice and citation to be issued for said hearing; at said hearing P. H. Harris was again appointed guardian, letters were issued, and on March 23 said guardian qualified. The Osage Indian Agency appealed this decision to the district court. I made two or three trips to Pawhuska to get this case set for trial and finally got the case set for trial on May 7, 1923, and the case was tried on that date and the judgment of the county court was affirmed; a transcript of the judgment was soon thereafter filed in county court. I then made two or three trips to Pawhuska to urge the Osage Indian Agency to pay to the guardian the funds of the incompetent, and on May 23, 1923, I served a written notice on the superintendent of the Osage Indian Agency to turn over such funds to the guardian, but said agency refused to do this for some time, but finally did recognize said guardian and sent the funds of the Indian to him, and they were received on or about July —, 1923. I think I made in all 12 to 15 trips to Pawhuska attending to this business. The Osage Indian Agency appeared at all hearings and hotly contested every hearing, for all of which I ask for an attorney fee in the sum of \$500.

"This claim is properly signed and attested, and I will state to the court that I made 12 to 15 trips to Pawhuska; yes, I expect I must have made at least 20; this was a very hotly contested case; we had two regular trials in the county court and two trials in the district court, all of which necessitated several trips up here to get the case set for trial, and I think the amount of trouble and work actually done in this case, the fees are in accordance with the fees charged in similar cases and I think well worth the money.

Q. What was the date of the guardianship?—A. The first was on November 13, 1922.

Q. And you also claim a fee of \$125 for each head right?—A. I claim an attorney fee for services rendered after this claim.

Q. That is after the appointment?—A. Yes, sir.

Q. What work did you do for the guardian for this \$125 here?—A. Well, that includes services such as hearings such as we have had here to-day, and for the matters necessarily coming up in every estate.

Q. Did that not include the appointment of a guardian if it occurs within a year?—A. I think now where it is a contested matter and an appeal is taken from it like this case—two cases in the county court and two in the district court.

Q. What I am trying to get at, what is it the lawyer does during the year for that \$125 they receive?—A. Ordinarily it would be preparing the petition for appointment of guardian; the letters and the bond and things of that nature, and seeing about accounts and taking them up and either allowing or disallowing them; all the matters that come up in an ordinary case.

Q. Was any petition ever presented in the county court authorizing the employment of counsel prior to the appointment of a guardian?—A. No, sir.

Q. The guardian then was not authorized to employ counsel in this case by order of court?—A. No, sir.

Q. How would you represent the guardian without a contract with the guardian?—A. Well, it was legal services for representing him at different times in court in this matter and for all work necessary.

Q. There was no order made authorizing the guardian to employ counsel?—A. No, sir.

(Witness dismissed.)

H. R. Duncan, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. RANSDELL:

Q. State your name.—A. H. R. Duncan.

Q. You are a practicing attorney of the city of Pawhuska?—A. Yes, sir.

Q. And have been for a number of years?—A. I have.

Q. You are familiar with the fees that are paid to attorneys for guardianship cases in this county?—A. I think so.

Q. You heard me read from the statement of claim in this case the amount of services rendered. I will ask you to state, in your opinion, what would be a reasonable fee for those services.—A. In my opinion \$500 is reasonable for that amount of services, but I don't want to be understood in passing my opinion in this case that the ward is liable. If the services compared with the statement rendered, I will say the amount asked is a reasonable amount for the services rendered.

Examination by Mr. HUMPHREYS:

Q. If there had been no contract made—that is, no authorized contract made by the guardian to pay attorney fees—do you think the guardian would be authorized to pay for services rendered in maintaining this guardianship suit?—A. That is a legal question. As I have just stated, I know nothing about the case, and I am just passing on the reasonableness of the fee for the services rendered.

(Witness dismissed.)

P. H. Harris, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. RANSDELL:

Q. Your name is P. H. Harris?—A. Yes, sir.

Q. You have gone into the amount of work I have rendered in this case?—A. Yes, sir.

Q. State whether or not you attended on all these hearings mentioned in this case?—A. Yes, sir.

Q. State whether you made these trips?—A. Yes, sir.

Q. State about the number of trips?—A. About 20, or such a matter.

Q. This covered trips you made to the county court for hearings and to the district court to get the case set for hearing and trips made to the agency to get the agency to turn the money over to you and all matters pending during a period of time from February to July?—Yes, sir.

Q. You are asking for a special guardianship fee in this case of \$500?—A. Yes, sir.

Q. Do you think that is a reasonable fee?—A. Yes, sir.

Q. Were you out any expense during that time?—A. Yes; expense of coming over here.

Q. About what do you think you were out; livery hire, etc.?—A. About \$200.

Q. And you think this amount is reasonable?—A. Yes, sir; I do.

Examination by Mr. HUMPHREYS:

Q. You have not been guardian for a year have you, Mr. Harris?—A. No, sir.

Q. You have not asked yet for compensation for your work as a guardian?—A. No, sir.

Q. What do you expect to do for your ward to earn the fee of \$250?—A. Why, I expect to look after his business and anything that is necessary to be done, as the judge may direct.

Q. You do consider that is part of your business?—A. Yes, sir.

Q. What I want to know is, just what you expect to do for this \$125—what do you mean to do, draw checks?—A. No; that is a lot of work to look after their land and see who is contracting bills and what they are needing, and everything other guardian expects to do.

Q. Your attorney has asked for \$500 and you have asked for \$700?—A. No; \$500 and \$200 that I advanced.

Q. That includes the expenses?—A. Yes, sir.

Q. That is \$200 for expenses for special services in addition to the \$500?—

A. Yes, sir.

Q. When was this guardianship finally consummated?—A. They turned the money over to me right after last payment, I don't remember the date they turned it to me.

Q. It was sometime in May that you were finally determined guardian?—

A. I don't remember the date; it was something like six months—we were five or six months getting things through.

Q. Suppose you had finally lost and the court had refused to confirm your appointment, do you still think this would be a legal charge against the estate?—

A. I think so and I talked it over with my wards and they think so.

Q. You have not been guardian but about six months?—A. Yes, sir.

Q. And your expenses have been about \$200 a month?—A. I left that up to my attorney.

Q. That does not include regular fees allowed by the court for services?—

A. That was—my understanding is this was to be for services up to the time they turned over the money; that is my understanding.

Q. That is not over six months?—A. About six months.

Q. The question I am asking, what do you do to get the \$250 fee allowed by the court?—A. There is plenty to do, as some of the land is not leased and a lot of rent is due on land that was leased up at the office and that was never been collected, I am going to make an effort to collect that and anything else I see to their benefit.

Q. What do you mean by collecting money due at the agency?—A. I say there is considerable rent that is due that is not collected through the office some way.

Q. You mean money in the hands of the Government at this time?—A. No, a great many of these parties on the farms have not turned in any rent money and I am going to make an effort, with the help of the office to collect that.

Q. How much money have you on hand now, if you know, belonging to the ward?—A. Well, I have somewhere around \$10,300 for one and \$12,500 for the other.

Q. And you are making a claim in each case?—A. Yes, sir.

Q. How many cases are you asking that amount in two or three?—A. Two.

Q. And your attorney is asking \$500 in each case?—A. Yes, sir.

Q. Then if that is the case you and your attorney will get \$400 for the last six months instead of \$200 in the two cases?—A. Yes sir.

(Witness dismissed.)

MR. HUMPHREYS. J. George Wright objects to the payment of extraordinary fees to the guardian and attorney for services rendered without first applying to this court for authority to contract for attorney fees and that the extraordinary services rendered by the guardian is excessive and not earned in addition to the regular fee of \$250 and \$125 to the guardian and attorney.

The position of the attorney for the agency is that the guardian for the minor or incompetent has no authority to contract any debts or employ counsel or any other matter without first obtaining an order of court duly authorizing him so to do; that the only place where a guardian may act without authority of court is for necessities, unless incurred at his own risk.

(Adjournment is now taken for further testimony.)

In the county court in and for Osage County, State of Oklahoma. In the matter of the guardianship of Juanita Hunter, incompetent. No. 1664

Now, on this the 8th day of January, 1924, this cause comes on for hearing on the annual report of C. E. Riley, guardian of Juanita Hunter, Osage allottee No. 806, an incompetent, person; the guardian being present in his own proper person and by Wilson, Murphey & Duncan, his attorneys, and the superintendent of the Osage Indian Agency having been regularly and duly served with a true and exact copy of this report at the time of the filing thereof, and not being present at this time either in person or by representative, and this being the time regularly set by notice and continuance from time to time for the hearing of this report, and C. E. Riley being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. WILSON:

Q. You may give your name.—A. C. E. Riley.

Q. You are the guardian of Jaunita Hunter?—A. Yes, sir.

Q. And you have been so acting for a long time?—A. Yes, sir.

Q. I will hand you an instrument which I will have the reporter mark "Exhibit A" and ask you to state what that is.—A. It is my guardianship report.

Q. Of your administration of the estate of Jaunita Hunter, an incompetent person?—A. Yes, sir.

Q. Does that guardianship report tell all the items of receipts and all the items of expenditures during the period of time purported to be covered by it?—A. Yes, sir.

Q. And that is from your last annual report until the date of the filing of this report.—A. Yes, sir.

Q. And those representations are true and correct?—A. Yes, sir.

Q. The report shows that on the 26th day of September, 1922, you had on hand a balance of \$3,144.07; it also shows that since that time you have received from the agency \$5,995.05, \$6,570.05, \$3,695.05, \$7,720.05, \$100; all those items were, I presume, the annuity payments were they?—A. Up to the \$100.

Q. I see an item of \$100 received from the Western Union, refund, what was that, Mr. Riley?—A. She was away, and I wired her \$100, and she didn't get it, and I got the money back from the Western Union.

Q. \$7,720.05, that was annuity?—A. Yes, sir.

Q. \$223.26, itemized as tax refund; what was that?—A. Well, I collected back \$223.26 in taxes; that was on old taxes on the land, and I bought those certificates from the Bank of Commerce that held these certificates, and then it was questioned by the court and the agency as to just how the old taxes should be handled. There seemed to be some difference of opinion, so in order to protect the land I bought the certificates, and later on of course the county treasurer refunded me the money.

Q. There is another item, \$31.50, listed as rent.—A. That is rent—I could say here that, as far as the rent on the homestead, I have had that matter up with Mr. Wright and he has written me that Mr. Drummond has been appointed as guardian for George Pitts, and he has written Mr. Drummond and thinks that I can collect the rent on the homestead from Mr. Drummond as guardian of George Pitts, who has been occupying the homestead for the last two years.

Q. That is an entirely different matter—now on the other hand you have reported numerous items of expenditures; those were expended for your ward in the administration of her estate?—A. Yes, sir.

Q. You have vouchers?—A. Yes, sir.

Q. Showing all the expenditures?—A. Yes, sir. We now tender to the court for his examination vouchers and offer in evidence this report.

Q. This report shows the balance which you have paid to Mr. Burt in the purchase of that property, that place where Jaunita Hunter lives?—A. Yes; it shows the entire property paid for at this time.

Mr. WILSON. If your honor please, there has been pending here several weeks, some time before Christmas, the application of Mr. Riley to make some improvements on that property which Jaunita Hunter insists on and service was made on Judge Humphreys, but because of his absence and your absence and other things we have not been able to take it up and so thought we might be able to take it up at this time.

The COURT. The court believes it would be better to have Jaunita Hunter here.

Mr. WILSON. I would like to state to the court that at our hearing in reference to the property the matter was brought out that there appears to be some indebtedness against the place—quite a large mortgage held by Mrs. Goss—that came as a surprise to me; Mr. Ludwick was here and testified also that it had not been paid off, but after a thorough examination of the records I find that is not true and the mortgage has been paid.

Q. Mr. Riley, how many estates does Jaunita Hunter have?—A. one and eleven-twelfths.

Q. State what extent of trouble you have been to in the management of this estate, during the past year?—A. In the past year I have been getting along better than we did before. When I took over the estate she was possibly \$20,000 in debt and had no home or furniture, and of course getting her established and getting her furniture, of course, then she was drinking and carousing a good deal, she has settled down and so outside of the annoyance her well being has been much better then ever was before; I think she is leading a better life and living in better comfort, of course the house ought to be fixed up—

Q. This report covers a period of about five quarters, does it not?—A. Yes, sir.

Q. Did you delay this last report on account of the litigation that has been brought?—A. Yes, sir.

Q. This last report shows that during the five quarters you have expended how much money?—A. My receipts were \$35,199.08 and I paid out \$34,609.98, of course that was for the purchase of the property and old debts and then I had a time certificate of deposit at the National Bank of Commerce for \$9,000 and the taxes and income tax reaches approximately \$8,000.

Q. You have the certificate of deposit have you?—A. Well, you didn't notify me until after the bank had closed but you can call up there and get it.

Q. It is there?—A. Yes; we have that much on deposit.

Q. In the form of a certificate of deposit?—A. Yes, sir.

Q. About what was expended in the ordinary expense account of Jaunita during this time, if you have figured that up?—A. For the five quarters?

Q. Yes, sir.—A. Approximately, \$7,000.

Q. Now, why did you exceed the \$4,000 which the agency has contended will be your limit of expenditure?—A. We had that matter up with Judge Sturgell at the last report and of course Jaunita is always wanting more money and we explained that she had quite a large family and was hiring a good deal of help up there to take care of that family, we were sure that under those circumstances her inherited estate and all it was alright to spend more than \$1,000 a quarter on her. Of course now I want to know what the instructions of the court are so I can govern myself accordingly.

The COURT. I don't think it would be advisable to spend more than \$1,000 a quarter from now on.

Q. Do you think her actual living expenses have exceeded \$4,000 in the last four quarters?—A. No; not the last two quarters, since I have understood what they are contending for.

Q. You have been put to the expense of a good deal of litigation, have you not, during the last few months?—A. Quite a little bit.

Q. By reason of charges having been filed against you?—A. Yes, sir.

Q. And that resulted in a good deal of work on your account, did it not?—A. Yes, sir.

Q. And it has also resulted in calling on your attorneys to perform unusual work?—A. Yes; it caused a good deal of work for my attorneys.

Q. And has caused you a good deal of worry, has it not?—A. No, sir.

(The court approves the report and allows the guardian a fee of \$600 and the attorneys a fee of \$300.)

STATE OF OKLAHOMA,

County of Osage, ss:

To the judge of the county court of said county: The undersigned guardian of Jaunita Hunter, Osage allottee No. 860, incompetent, would respectfully submit to the court the following report of his acts and doings as such guardian from September 26, 1922, to December 13, 1923. Guardian charges himself with the following, to wit:

1922		
Sept.	26. Balance.....	\$3, 144. 07
	30. Osage Indian Agency.....	5, 995. 05
Dec.	30. Osage Indian Agency.....	6, 570. 05
1923		
Mar.	28. Osage Indian Agency.....	3, 695. 05
June	21. Osage Indian Agency.....	7, 720. 05
Sept.	18. Western Union refund.....	100. 00
Oct.	8. Osage Indian Agency.....	7, 720. 05
Oct.	9. Tax refund.....	223. 26
Nov.	23. Rent O. A. Haskins.....	31. 50

Total amount of moneys received or collected..... 35, 199. 08

Guardian asks to be credited with the following sums paid out as per receipts exhibited:

1922		
Sept.	26. Triangle Drum Co., milk.....	\$3. 75
	26. Broadway Central Hotel, cash draft.....	25. 00
	30. Jaunita Hunter, allowance.....	25. 00
Oct.	3. Parisian Shop, merchandise.....	77. 50

1922		
Oct.	4. Phelps Furniture Co., furniture.....	\$36. 00
	4. Jaunita Hunter, allowance.....	30. 00
	4. Lelia Randolph, washing and labor.....	17. 00
	5. Nell Canada, taking care of baby.....	10. 00
	5. C. M. Hirt, city clerk, light and gas.....	3. 55
	5. Pawhuska Oil & Gas Co., oil and gas.....	1. 75
	10. Pawhuska Ice Co., ice.....	30. 00
	13. Lelia Randolph, washing.....	6. 50
	13. B. H. Summers, fixing piano.....	31. 30
	14. Jaunita Hunter, allowance.....	20. 00
	16. Jaunita Hunter, blankets.....	37. 00
	18. Lelia Randolph, washing.....	6. 00
	18. Jaunita Hunter, allowance.....	25. 00
	20. W. W. Vaughan, attorney fees.....	200. 00
	20. C. E. Riley, guardianship fee.....	625. 00
	20. W. B. Martin, livery.....	37. 50
	23. Jaunita Hunter, allowance.....	30. 00
	23. L. Futtermans, shoes, etc.....	28. 25
	26. Stephenson & Givens, groceries.....	262. 45
	28. Jaunita Hunter, allowance.....	15. 00
Nov.	1. Jaunita Hunter, Scott trip to Hominy.....	15. 00
	8. Jaunita Hunter, allowance.....	20. 00
	8. Pawhuska Oil & Gas Co., October account.....	4. 20
	8. C. M. Hirt, light and water.....	5. 50
	18. Lillie Randolph, washing.....	12. 00
	9. Jaunita Hunter, clothes.....	40. 00
	9. Marcella Whitetail, labor.....	30. 00
	10. Martha Whitetail, labor.....	30. 00
	13. National Bank of Commerce, taxes.....	199. 88
	15. Edward R. Phelps, county treasurer, taxes.....	55. 47
	16. Jaunita Hunter, allowance.....	12. 00
	16. Martha Whitetail, labor.....	10. 00
	18. Lillie Randolph, washing.....	8. 00
	18. H. G. Burt, balance on house.....	2, 087. 22
	20. Junia Hunter, allowance.....	25. 00
	22. Hominy Trading Co., money advanced.....	30. 00
	24. Martha Whitetail, labor.....	10. 00
	24. Jaunita Hunter, allowance.....	15. 00
	24. Lillie Randolph, washing.....	6. 00
	28. Jaunita Hunter, allowance.....	35. 00
	29. Lillie Randolph, washing.....	6. 00
Dec.	4. Jaunita Hunter, allowance.....	35. 00
	4. Pawhuska Oil & Gas Co, oil and gas.....	7. 00
	4. Martha Whitetail, labor.....	15. 00
	9. Jaunita Hunter, allowance.....	10. 00
	11. Lillie Randolph, washing.....	6. 00
	12. Doctor Skinner, medical services.....	18. 00
	13. M. D. Myrick, cooking and nursing.....	25. 00
	16. Jaunita Hunter, allowance.....	25. 00
	18. Jaunita Hunter, Christmas money.....	150. 00
	20. M. D. Myrick, nursing and medical.....	16. 45
	21. C. M. Hirt, light and water account.....	8. 50
	22. Lillie Randolph, washing.....	10. 00
	22. Jaunita Hunter, allowance.....	25. 00
	27. Jaunita Hunter, allowance.....	10. 00
	28. M. J. Myrick, labor.....	15. 00
	28. Jaunita Hunter, allowance.....	20. 00
	28. Joe Liebenheim, children's clothes.....	182. 00
	28. H. G. Burt, old debt, court order.....	5, 500. 00
	28. Jaunita Hunter, allowance.....	35. 00
	29. Pawhuska Furniture Co., furniture.....	140. 00
	29. K. Lawrence Young, pictures and jewelry.....	87. 00
1923		
Jan.	2. Drummond Cattle Co., Tisdale account.....	150. 00
	2. Mrs. B. F. Mason, tubercular sale of seals.....	10. 00
	2. Pawhuska Ice Co., ice.....	6. 50

1923

Jan.	5.	Jaunita Hunter, allowance	\$10.00
	5.	Mrs. J. M. Worten, clothes	47.55
	5.	Smith Rachet, store dishes	62.75
	6.	G. & G. Store, clothes	49.93
	6.	M. J. Myrick, labor	22.00
	6.	E. A. Stoneh, use	3.00
	6.	Chas. M. Hirt, city clerk	8.90
	10.	Pawhuska Oil & Gas Co., oil and gas	17.03
	10.	Lelia Randolph, washing	16.00
	10.	Ballard Martin, taxes	37.50
	10.	Jaunita Hunter, clothes	60.00
	19.	Jaunita Hunter, allowance	30.00
	23.	Bertha Ridge, labor	25.00
	23.	Jaunita Hunter, trip to Claremore	75.00
Feb.	23.	Heaton-Walton Hardware, stoves and hardware	78.95
	29.	Western Union, money wired to Claremore	75.00
	3.	G. C. Scgo & Co	1.70
	6.	Bertha Ridge, labor	25.00
	6.	Jaunita Hunter, allowance	10.00
	9.	Pawhuska Oil & Gas Co	16.80
	9.	Jaunita Hunter, allowance	20.00
	9.	Lily Randolph, washing	15.00
	16.	C. M. Hirt, city clerk	5.70
	23.	Mrs. Bertha Ridge, labor	25.00
Mar.	9.	Jaunita Hunter, allowance	25.00
	9.	Mrs. M. J. Miller, labor	25.00
	9.	Pawhuska Oil & Gas Co., oil and gas	8.10
	13.	Lily Randolph, washing, five weeks	30.00
	13.	Jaunita Hunter, allowance	50.00
	13.	Jaunita Hunter, allowance	50.00
	15.	Leander Dixon, treasurer, taxes	72.25
	16.	C. M. Hirt, city clerk	4.65
	20.	Casnor Hardware Co., tools and repairs, plumbing	14.40
	20.	Jaunita Hunter, allowance	50.00
	21.	Lily Randolph, washing	12.00
	21.	Mrs. M. J. Miller, labor, two weeks	25.00
	22.	Yellow Cab Co., trip to Fairfax	20.00
	24.	Jaunita Hunter, allowance	25.00
Apr.	27.	Osage Mercantile Co., clothes	150.00
	27.	Stephens & Givens, groceries	50.00
	30.	Jaunita Hunter, allowance	30.00
	30.	Leander Dixon, county treasurer, taxes	47.00
	31.	Mrs. Worten, baby funds	32.50
	31.	Lillie Randolph, washing	6.00
	4.	Jaunita Hunter, allowance	30.00
	4.	Doctor Goss, treating children	84.00
	6.	Pawhuska Oil & Gas Co	14.44
	7.	Lily Randolph, washing	4.00
	7.	Jaunita Hunter, allowance	50.00
	10.	Puryears, balance account	19.67
	10.	Dr. Roscoe Walker, medical service	40.00
	10.	D. B. Maher, account	17.50
May	10.	Quarles Hardware Co., balance on saddle	75.00
	10.	Dr. W. H. Aaron, medical services	11.00
	17.	C. M. Hirt, city clerk, light and water	13.85
	17.	Jaunita Hunter, allowance	60.00
	19.	Mrs. M. J. Miller, labor	50.00
	20.	Lillie Randolph, washing	10.00
	25.	Jaunita Hunter, trip to Claremore	100.00
	25.	Mrs. M. J. Miller, labor	12.50
	27.	Mrs. Mildred Roberts, clothes	31.04
	28.	Lillie Randolph, washing	3.00
	30.	City Meat Market, old account, meat bill	90.20
	2.	Pawhuska Oil & Gas Co	12.92
	4.	Mrs. M. J. Miller, labor	12.50
	4.	Western Union, money to Claremore	75.00

1923

May	8. Lillie Randolph, washing	\$5. 00
	9. Jaunita Scott, allowance	30. 00
	15. Salvation Army, donation	25. 00
	15. City clerk, light and water	9. 50
	16. John Collins, trip to Grayhorse	15. 00
	16. Jaunita Hunter, allowance	25. 00
	18. Jaunita Hunter, allowance	25. 00
	21. Mary E. Revard, rent	66. 00
	21. Jaunita Hunter, allowance	10. 00
	26. Jaunita Hunter, allowance	25. 00
	29. Jaunita Hunter, Decoration Day flowers	75. 00
	31. Nellie Canda, labor	20. 00
June	4. Pawhuska Oil & Gas Co., oil and gas	3. 42
	4. Heaton-Walton Hardware Co., supplies	16. 75
	6. Jaunita Scott, allowance	50. 00
	9. J. R. Johnson, fixing yard	35. 00
	11. Jaunita Hunter, allowance	50. 00
	15. City clerk, light and water	6. 90
	15. Western Union, money wires to Jaunita Hunter	75. 00
	18. Jaunita Hunter, allowance	50. 00
	21. G. B. Mellott, bond premium	43. 33
	23. Mary Revard, rent	66. 00
	26. Jaunita Hunter, allowance	60. 00
	27. Nellie Canda, labor	87. 50
	28. Mrs. J. M. Worten, clothes	21. 50
	29. Osage Mercantile Co., clothes	153. 46
	29. Collector internal revenue, income tax	482. 96
	30. Jaunita Hunter, allowance	30. 00
	30. Jaunita Scott, allowance	100. 00
July	2. Jaunita Scott, allowance	50. 00
	2. Pawhuska Oil & Gas Co., oil and gas	3. 42
	9. Jaunita Hunter, allowance	50. 00
	13. Nellie Candada, laundry work and salary	37. 00
	16. Jaunita Hunter, trip to Colorado	150. 00
	16. City clerk, water and gas	17. 40
July	20. Henry Canada, moving J. Hunter to hill	5. 00
	25. Nellie Canada, salary and laundry	37. 00
	26. Western Union, money wires to Colorado	101. 73
	28. Jaunita Hunter, allowance	125. 00
Aug.	8. Jaunita Hunter, part allowance	25. 00
	8. Nellie Canada, salary and laundry	37. 00
	11. Jaunita Hunter, allowance	25. 00
	11. Nellie Canada, labor	10. 70
	15. City clerk, water and light	2. 25
	17. Jaunita Hunter, allowance	30. 00
	18. Jaunita Hunter, part allowance	10. 00
	20. Jaunita Hunter, part allowance	20. 00
	20. Lizzie Tucker, laundry work	5. 80
	21. Pawhuska Oil & Gas Co., oil and gas	2. 00
	25. Lizzie Tucker, laundry	8. 00
	25. Gertrude Paramore, cook	10. 00
	27. Jaunita Hunter, allowance	50. 00
	31. Jaunita Hunter, allowance	25. 00
Sept.	4. Jaunita Hunter Scott, trip to Oklahoma City	100. 00
	4. Jaunita Hunter, for goods express office	100. 00
	8. Gertrude Paramore, wages and washing	26. 00
	8. Pawhuska Oil & Gas Co., oil and gas	2. 28
	10. O. V. Pope, guardian Nah-me-tsa-he, balance on mortgage, court order	5, 506. 00
	11. Jaunita Hunter Scott, allowance	50. 00
	14. Collector internal revenue income tax	477. 00
	15. Jaunita Hunter Scott, allowance	15. 00
	17. Jaunita Hunter, allowance	75. 00
	17. Stephenson & Roark, insurance	124. 38
	20. Triangle Drug Co., drugs and sundries	10. 00
	21. City clerk, water and gas	8. 70

1923		
Sept.	22. Mrs. J. M. Wotten, clothes.....	\$50. 00
	23. Lawrence Young, picture of brother.....	20. 00
	24. Jaunita Hunter, allowance.....	75. 00
Oct.	1. Jaunita Hunter, allowance.....	75. 00
	4. Thos. Leahy, court clerk, court costs.....	66. 50
	4. Pawhuska, Oil & Gas Co., gas.....	4. 95
	5. Mrs. John Gigheart, sewing.....	20. 00
	8. National Bank of Commerce, time c/d.....	9, 000. 00
	8. Mrs. J. R. Harris.....	72. 00
	8. Jaunita Hunter, allowance.....	75. 00
	8. H. G. Burt, balance due old notes, court order.....	1, 008. 89
	8. Stephenson & Givens, groceries.....	55. 15
	12. P. N. Humphrey, making income tax report.....	47. 92
	15. Jaunita Hunter, allowance.....	75. 00
	17. Thos. Leahy, court clerk, court costs.....	32. 35
	17. Heaton-Walton Lumber Co., supplies.....	41. 95
	17. Leander Dixon, county treasurer, taxes.....	579. 58
	18. E. A. Threadgill, court order, attorney fees.....	200. 00
	18. City clerk, water and light.....	5. 55
	22. Jaunita Hunter Scott, allowance.....	75. 00
	25. Jaunita Hunter, allowance.....	10. 00
	29. Jaunita Hunter, allowance.....	75. 00
Nov.	1. City clerk, water and light.....	7. 15
	3. F. S. Kelly Furniture Co., mattress, pillows, etc.....	114. 00
	3. Jaunita Scott, allowance.....	75. 00
	3. Pawhuska Oil & Gas Co., gas.....	6. 08
	8. Jaunita Scott, allowance.....	75. 00
	14. Jaunita Scott, allowance.....	25. 00
	19. Jaunita Hunter, allowance.....	75. 00
	24. Jaunita Hunter, allowance.....	75. 00
Dec.	1. City Clerk, water and light.....	5. 80
	3. Jaunita Scott, allowance.....	75. 00
	3. Pawhuska Oil & Gas Co., gas.....	10. 64
	3. Thos. Leahy, court clerk, court cost.....	160. 85
	10. Jaunita Scott, allowance.....	75. 00
Total amount paid out.....		34, 609. 98

RECAPITULATION

Total amount received.....	35, 199. 08
Total amount paid out.....	34, 609. 98
Balance due.....	589. 10

The following is an itemized account of all notes bonds, accounts, and evidences of indebtedness which are herewith presented for inspection, composing the personal estate of my said wards:

Time certificate of deposit, National Bank of Commerce..... \$9, 000
All of which is respectfully submitted.

C. E. RILEY.

STATE OF OKLAHOMA,
County of Osage, ss:

C. E. Riley, guardian of Jaunita Hunter, Osage allottee No. 860, incompetent, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions and of all moneys and effects received and paid out by him on account of said incompetent from September 26, 1922, to the 13th day of December, A. D. 1923, and of all moneys, notes, bonds, accounts, and evidences of indebtedness composing the personal estate of said incompetent, on hand the 13th day of December, 1923.

C. E. RILEY.

Subscribed and sworn to before me this 17th day of December, A. D. 1923.

[SEAL]

LEAH PACE, Notary Public.

My commission expires December 3, 1927.

Indorsed 1664:

Guardian's report of the account of C. E. Riley, guardian of Juanita Hunter, Osage allottee No. 860, incompetent. County court, Osage County, Okla. Filed December 18, 1923.

THOMAS LEAHY, *Court Clerk*.
By D. S. LANDRUM, *Deputy*.

EXHIBIT A

Service accepted and copy received this 18th day of December, 1923.

J. GEORGE WRIGHT, *Superintendent Osage Agency*.
By C. E. C.

DUPLICATE OF TRUE COPY

STATE OF OKLAHOMA,
Osage County, ss:

I, Thomas Leahy, court clerk, in and for the county and State aforesaid, do hereby certify that the statement hereto attached is a full, true, and correct copy of original report as the same now appears of record at this office.

Witness my hand and the seal of said court at Pawhuska, Okla., on this 14th day of January, 1924.

(SEAL.)

THOMAS LEAHY, *Court Clerk*.
By NELLE L. SONNECHSEN, *Deputy*.

The CHAIRMAN. Then you can tell them that they can get them here.

Mr. HUMPHREYS. I have already done so. I will leave them here in your office. The House committee called for a number of items and asked the court to have the guardians make an inventory. You will see by the objection I have made to all these reports I kept calling attention to the fact that there was no inventory filed. The law requires that that inventory be filed, and we are insisting that they file it. In other words, that means a complete résumé of all of the transactions regarding the money in the hands of the guardians during the year, what property acquired, in order that anyone may go there and immediately see the status of that account. We have insisted that the bank statements be produced, that the bank books be produced, and the bonds and securities be produced, and that the numbers of the bonds be stated in the report, in order that we may check up carefully the items in each report.

There are a few of these, and I will read the first few that I pick up. These are recent. These show the court costs, the attorney's fees, and the guardian's fees.

The CHAIRMAN. What are these, now? Those are inventories?

Mr. HUMPHREYS. They are inventories gotten up at the request of the House. This is the House record, and I can not introduce it, but I will read a few of these items.

John Wood, No. 81, county court No. 1632, the name of the guardian is W. H. Smith. He was appointed March 3, 1920. He received \$50,398.64 and disbursed \$50,222.08. He has on hand at this time \$126.56. His investments that he has made out of that were improvements on homestead \$2,015.04, and personal property \$1,335.75.

Mr. HUMPHREY. What was the amount of his debts?

Mr. HUMPHREYS. The debts contracted prior to the appointment of guardian were \$23,004.99. His living expenses from March 3, 1920, to the time this report was filed were \$17,811.21.

The CHAIRMAN. How many in the family, do you know?

Mr. HUMPHREYS. No; I do not know.

Mr. HUMPHREY. That is living and miscellaneous, is it not?

Mr. HUMPHREYS. Yes; that is living and miscellaneous. If I do not make these papers correct, you call me down right now, because I don't want to make any misstatements here. In his case the attorney's fees and guardian's fees and court costs are \$1,883.32.

In Louis Pryor, No. 611, county court No. 674, W. H. Smith, guardian, appointed May 21, 1920, cash receipts were \$42,505.10; disbursements, \$31,218.91; cash on hand, \$11,286.19. The amount of property and assets on hand is United States bonds \$4,000; building and loan stock, \$1,450; improvements on residence, \$682; and personal property, \$1,514.98; making a total of \$7,647.68; and the cash on hand is \$11,286.19. The amount of indebtedness contracted prior to the appointment of the guardian is \$5,772.95, and living and miscellaneous expenses were \$14,785.44. The court costs in this case, including attorney and guardianship fees for that period, are \$2,116.56.

I will give just a few of these. These are accessible if the Senate wants them.

The case of Ralph Onhand, No. 582, county court No. 1065, A. G. Williams, guardian, appointed January 3, 1922. The amount of cash received is \$24,910.24; the total amount of disbursements is \$16,167.28; the cash on hand, \$8,842.96. The amount of assets bought out of the money received is United States bonds, \$4,200; building and loan stock, \$1,420.29; real estate, lots 11, 12, and 13, in block 6, \$3,400; personal property, \$2,740.74. The amount of money in the way of administration is \$1,146.45, which is the court costs, attorneys' fees, and bond premiums during this time.

Mr. HUMPHREY. I would like to ask the judge a question.

Mr. HUMPHREYS. All right.

Mr. HUMPHREY. Do you know anything about the character of this Indian, as to whether or not he drinks?

Mr. HUMPHREYS. No, sir; I do not know a thing about it. There is a notation on the bottom of this that I will call your attention to. There seems to have been remarks made that he has been treated for drugs and intoxicating liquors. I presume he is one of those that we call a drunkard.

As I understand the point the agency is making in these expenditures is this, that the agency and the department claim that they can do this work for a great deal less money. That is the only object, I understand.

In the case of Hunkahloppy, No. 261, case No. 1667, H. O. Ostermyer, guardian, appointed September 21, 1920. The amount of case received was \$55,199.69, the total amount of disbursements, \$41,481.54; cash on hand, \$13,618.15. The amount of assets are United States bonds, \$3,500; building and loan stock, \$3,100; personal property, \$750. The amount of assets out of this amount of money received is \$7,350, and, including cash on hand \$13,618.15, is \$20,968.15. The cost of administering the estate from September 21, 1920, was \$2,534.60. The debts contracted prior to appointment of guardian was \$16,311.35.

I will not read any more of these unless the committee requires it or desires it.

The CHAIRMAN. As I understand it, these are prepared to be introduced in a congressional hearing, and will be available here for the committee.

Mr. HUMPHREYS. Yes, sir.

Mr. HUMPHREY. May I ask one or two questions before you pass that?

Mr. HUMPHREYS. Yes, sir.

Mr. HUMPHREY. In the John Wood case John Wood has a certificate of competency, has he not?

Mr. HUMPHREYS. I have not the record before me. I do not know.

Mr. HUMPHREY. Do you know, Mr. Woodward?

Mr. WOODWARD. I can not recall without looking at the record.

Mr. HUMPHREY. I will say that he does, and, assuming that he had a certificate of competency, if it were not for the guardian, you would pay it to the Indian?

Mr. HUMPHREYS. It goes to him, anyway.

Mr. HUMPHREY. Do you know whether Louis Pryor had a certificate of competency?

Mr. HUMPHREYS. I have not the record before me.

Mr. HUMPHREY. Do you know whether Ralph Onhand had a certificate of competency?

Mr. HUMPHREYS. I know he has not.

The CHAIRMAN. I understand that you selected these cases without regard to whether they were restricted Indians or unrestricted Indians.

Mr. HUMPHREYS. I will explain that, Senator. There are two classes of Indians under guardianship. One is what we call the non-competent or restricted class, who have been placed under guardianship because they have become indebted or because they used drugs or intoxicating liquor to excess. The other class is the competent Indian; that is, the Indian who has a certificate of competency. He may be a full blood or mixed blood, and whenever he has been declared incompetent by a State court, then the superintendent of the Osage Agency under the law as we construe it, and I think all the lawyers in Pawhuska agree, it is the duty of the agency then to check these reports before they can spend all of that money. There is no restriction on the spending of the money by the guardian, and it is not claimed by us that he can not spend it all.

The CHAIRMAN. These reports you have were chosen without regard to which class they belonged?

Mr. HUMPHREYS. Yes, sir. It makes no difference so far as the agency is concerned. However, we do insist, and the guardians, too, are making a strenuous endeavor to hold these restricted Indians down to \$4,000 a year. I won't say that I have had hearty cooperation with the bar and the guardians, too. I sat down and talked to a guardian across the table in the examination of these reports and told him what we wanted, and he agreed with me and said he would do everything he could.

The CHAIRMAN. You take that class of Indians who have a certificate of competency from the department, and who have been adjudged incompetent by the State courts and a guardian appointed under the State law, if they were not under this guardianship the department would have to pay all the money to them directly?

Mr. HUMPHREYS. They do it anyway. If he was under guardianship, we would pay it to this Indian.

The CHAIRMAN. Then that class of guardianships sometimes do a good work, don't they?

Mr. HUMPHREYS. Yes, sir; and some of the greatest injustices have been done to that class of guardianships. To my mind where the greatest injustice has been done, has been to these competent Indians under guardianship.

The CHAIRMAN. But those injustices in that particular class could be remedied by changing the law so as to give joint control?

Mr. HUMPHREYS. Yes. The agency has to a certain extent joint control; that is, they can check the report, and we are doing that. I have in my hand three cases where it says the guardian's fee totaled from \$5,000 up to \$12,000. When my attention was called to it I checked the reports, and I am too busy to make the audit. I have got 550 cases to look after, so I called in Sam Downs, who is an accountant, and he certifies these reports, and shows that in one case—

The CHAIRMAN (interposing). Those are reports in what class of cases?

Mr. HUMPHREYS. I think they are all in the competent class. This is an incompetent Indian, and in this report the accountant checks this guardianship short about \$12,000.

The CHAIRMAN. What do you mean by being short?

Mr. HUMPHREYS. Well, expenditures unauthorized, double charges, and in some respects unauthorized expenditures.

The CHAIRMAN. You mean that that shows that he has spent \$5,000 for things that were in the judgment of the department unauthorized?

Mr. HUMPHREYS. Not the judgment of the department, but the judgment of the accountant.

The CHAIRMAN. The auditor?

Mr. HUMPHREYS. Yes, sir. There are some of these cases that he has checked upon the hearing and report, and those matters have all been ironed out, and in one case especially I had in mind all the objections of the auditor were ironed out in court, and the court found that the expenditure had been authorized with the consent of the ward, who had been competent.

Now, as to the expenditures of money by those who are not under guardianship. I want to say this: In my opinion about these Indian questions, and I have been among them for 20 years, you have got to protect some of the Indians against themselves, although they may not think they need it. We had a class of Indians down there who will contract debts even under guardianship. They contract debts, although they have received all of their money from the agency.

The full blood who received the \$4,000, if he wants a car and can get it from some trader, will buy it on time. He will buy anything at all if you will sell it to him on time, and in that way he becomes indebted. The creditors then, or some one else for them, will make an application to the court asking for a guardian for this Indian, because he is a spendthrift, or that he is badly indebted. We have no spendthrift law in Oklahoma, but there are guardians appointed over a good many of these Indians on that ground, because of their indebtedness.

We have a few cases, one or two that I have in my mind now, in which after the debts have been paid, an application is made for the restoration of the ward to competency, and all the balance of the money that came from the Government is turned over to the incompetent ward, defeating in effect the act of Congress which was made to protect them against that unlawful expenditure of money. I am glad to say, however, that our present county judge, on my strenuous objection, has in several cases recently ordered the money paid back to the agency, and that the guardian should settle with the agency.

We have one matter that has come up several times, and if necessary I will give the records and cases. I have them here if they are desired. Under the act of 1912 the superintendent of the Osage Agency was given power to settle the indebtedness made by the individual Indian, and a great many of those settlements have been made and I think the general deduction of about 10 per cent was had and agreed to by nearly all, and receipts taken in full. However, there have been individual cases that have come up to my attention in which the parties, after having made those settlements, went out and took notes from the Indians for the balance that they claimed due under that settlement, and have collected them through the courts.

Mr. WOODWARD. Through the guardian?

Mr. HUMPHREYS. The guardian paying, of course, through the court; that is, the application would be made and the court would order it to be paid. I don't think anything like that has occurred under our new judge.

The CHAIRMAN. Is not that likely to happen in the department as well as in court? That they overreach that way?

Mr. HUMPHREYS. I do not see how it could; that is, that particular feature of it, because it had been settled and they had a record of it. For instance, an Indian owes \$10,000 to a merchant and settlement was made with the agency. The receipt in full was taken. The settlement was at arm's length. The man discounted his claim for 10 per cent.

The CHAIRMAN. They would take a note for the 10 per cent reduction?

Mr. HUMPHREYS. Yes; they would take a note for the 10 per cent reduction, and then present it to the guardian, and the guardian would make an application for it to be paid through the court.

The CHAIRMAN. That might be recovered in any court on the ground that the reduction was without consideration.

Mr. HUMPHREYS. Yes.

The CHAIRMAN. And I suppose that is the theory on which the court really acted?

Mr. HUMPHREYS. I do not think so. If there is consideration for the settlement and no fraud practiced.

The CHAIRMAN. The courts have held that in a compromise of that sort, even though the creditor did exhibit receipt in full, there was no consideration, and he can disregard his receipt in full and settle it in a court of equity.

Mr. HUMPHREYS. Well, I am not arguing it.

The CHAIRMAN. Of course, I have not practiced law for a good many years, but I used to run across that in bankruptcy matters frequently. In other words, an accord and satisfaction is not binding on the court where a less amount is taken in settlement unless

there was some consideration for the accord and satisfaction. In other words, the amount that is knocked off must have been in dispute, and if there was no dispute about it, then there was no consideration for the accord and satisfaction in the taking of a lesser amount. That is well established.

Mr. HUMPHREYS. If that is the case, there would be no necessity for the agent who has been given the power to settle those matters, because all he would have to do would be to pay the claim as presented. The agent has said that they charged all the way from 40 to a thousand per cent.

The CHAIRMAN. Of course, that is an evidence of bad faith on the part of the creditor.

Mr. HUMPHREY. When this guardian paid this note, what was the procedure he followed?

Mr. HUMPHREYS. The procedure under the laws of the State of Oklahoma, an application made.

Mr. HUMPHREY. And served upon the agency?

Mr. HUMPHREYS. I do not know. That matter came up before I was there.

Mr. WOODWARD. Yes; and we entered a protest against the payment of it.

Mr. HUMPHREY. Was any appeal taken?

Mr. WOODWARD. I do not recall about that, but I think an appeal was taken to the district court.

Mr. HUMPHREY. And what action was taken?

Mr. HUMPHREYS. If there was an appeal, it is here.

The CHAIRMAN. I do not think it is material, because there is no question in my mind but what a court would be bound to render a judgment for the 10 per cent, if there was no consideration for it being knocked off the bill. That is not a criticism of the court, because the law would force them to do that.

Mr. HUMPHREYS. I am not criticising the court.

The CHAIRMAN. I do not mean to put it that way; I should say there would be no criticism on a court which rendered a judgment of that sort upon a showing that the law authorized it.

Mr. HUMPHREYS. Well, I will not argue the law points. The thing that has been bothering us more than anything else in the county courts, is the extra fees; that is, fees for extra services. Mr. Woodward has made a résumé of the Juanita Hunter matter, and I will read it.

Attorney's fee \$400, guardianship fees \$625, court costs \$160.85, bond \$43.33, a total of \$1,229.18 for that year.

Mr. HUMPHREY. How many estates, do you know?

Mr. HUMPHREYS. I think it was two.

Mr. WOODWARD. Something over one; I do not know whether it is more than two or not.

Mr. HUMPHREYS. She has a time deposit of \$9,000, paid an old debt of \$5,500, and another old debt of \$1,008. The balance on the mortgage which was given for the purchase price of this house was \$5,506. The amount of the investment is \$9,000, the old debts were \$12,014, and the court costs \$1,229, a total of assets of \$22,243, and there was money otherwise spent amounting to \$9,812.

The application for extra services, to my mind, is one of the places where there is real objection. In other words, after allowing the

\$250 in each headright and \$125 for attorney's fees, frequently, and it has become quite a general practice, they ask for fees for extra services. I have one or two here, and I will just make a record of two of them which in my mind bears out the general trend of what is asked for in the way of extra services. In other words, for instance, the calling up on the phone.

Senator FRAZIER. How much do they charge for that?

Mr. HUMPHREYS. All the way from \$150 to \$200 a year extra.

The CHAIRMAN. What do you mean—for phone bills?

Mr. HUMPHREYS. No; just because they are annoyed by being called on the phone or something of that kind. I have one here that is a little bit strong, perhaps, but it is typical of some. In the case of Nah-sah-hah-me, county court No. 1694, the man asked \$1,000 for his services in acting as guardian and attorney both. He had a bill for extra services, and his reason for that was—I will read you from the testimony:

Q. How much extraordinary services have you rendered in this guardianship?

The court directed him to answer the question.

A. Guardians get \$250; that is, \$500 for the two estates; full estates, and I am my own attorney. That is \$150 in attorney's fees for each. That would be \$800, and now for this accumulated estate of \$50,000. It seems to me \$200 on top of that fee is reasonable.

Q. Well, I want to know what you did for that, how many hogs are down in that pen?

He testified that he wanted this \$200 for some hogs.

A. This has nothing to do with the hogs.

Q. Oh, I thought that was it.—A. It never run in my mind to charge for that. I was just telling you that was one of my duties as guardian.

Q. Did you move them?—A. Yes; I moved them; had it done.

Q. And you paid the other fellow for moving them?—A. Sure.

Q. I see. How much?—A. \$8 or \$10, I think it cost about that much. Of course, we got rid of them now.

And that is about the only services that he could think of he had performed for that \$200.

The CHAIRMAN. Did the court allow it?

Mr. HUMPHREYS. Yes, and then backed up on it. I told the court that his former report had not been approved, and the court sent for him and disapproved it, but finally allowed him \$800.

Now, in case No. 2379, in the guardianship of A-she-geh-hre and his wife, they are two full blood Indians and an application was made to have them declared incompetent. The agency raised an objection to the appointment and was overruled in the county court. It was appealed to the district court and this district court sent it back to the county court. The county court decided the case after new papers were filed, and an appeal was again lodged in the district court, which sustained the county court, and sent the case back. For that service the attorney and guardian made an application to the county court for \$2,800, I think it was. I appealed that case from the county court to the district, and succeeded in knocking off \$1,700 in these two cases.

I am going to ask permission to put that in the record. I can not put all of these in.

The CHAIRMAN. I think you had better state the salient facts in each case. I do not think it is wise at this time to duplicate what you have put in the other record.

Mr. HUMPHREYS. Nearly all of my testimony is confined in the other record, and it is true, with the explanation that I made relative to the \$1.200 fee which I want to state was made on the cases I had before me. I think if the Senate Indian Affairs Committee will take that record, that that will perhaps give you all the information you want along that line.

The CHAIRMAN. I do not think it is wise to duplicate it, because personally I am going through that record before we get through. I do not think there is any reason to duplicate the expense on that, do you, Senator?

Senator FRAZIER. No; I do not.

Mr. HUMPHREYS. If the Senate will take into consideration the testimony given before the House committee, I do not think there is anything more that I need to say, because the case is pretty well covered.

The CHAIRMAN. I want to ask you one or two questions. Have you encountered any difficulty in being heard as representing the department before the courts?

Mr. HUMPHREYS. No, sir.

The CHAIRMAN. Have you the right to appeal from any judgment which the county courts grant in a case?

Mr. HUMPHREYS. Of course, those matters are being congested. I will say this. We do have difficulty or have had some, no more perhaps than any other court where people differ as to what the law means, the only thing is that if I think I am right and the superintendent authorizes me to go ahead with the appeals, I am doing it. I have taken five appeals to the Supreme Court in the last month or so. I will say this, that so far as appeals to the district court are concerned, the agency has not been successful in winning very many cases.

The CHAIRMAN. There is nothing to keep you from appealing from any order of the county court, as it is called in your State, where there is a palpable wrong done by the judge in the lower court?

Mr. HUMPHREYS. Nothing on the part of the court. The courts have always signed my appeals and been very courteous.

The CHAIRMAN. In some parts of the State the probate court have been requiring probate attorneys, if they appealed from one order to take up the entire record.

Mr. HUMPHREYS. They have done that. That is an objection that I do want to insist on here.

The CHAIRMAN. That is quite expensive, isn't it?

Mr. HUMPHREYS. I will explain one case, the Lamb case, that this court has handed a decision down in. When the agency took that appeal it was before I came there. The reporter sent up the whole record, from the time the first application was filed, until the last paper in the case was filed. I do not know what that cost. It must have cost originally \$250.

The CHAIRMAN. That was not really necessary, was it, to raise the issue which you had?

Mr. HUMPHREYS. No, sir. I make an order in all of these cases where an appeal is taken to direct the court reporter what to take up. When we got to the district court the case had been tried and a decision rendered about the time I got there last May. The case dragged along until it was too late to file the case made, and the office wanted an appeal taken, so a transcript was made and filed in the

supreme court. I selected from that transcript what I knew to be the record in the case and filed it in the supreme court; had a writ of error issued upon it. The attorney for Lamb objected and moved to strike the appeal from the docket and dismissed it for the reason that it was not a true and correct transcript of the record. I obtained the permission of the supreme court to withdraw that transcript and had a nunc pro tunc order issued ordering the clerk to make a complete transcript of the record as of the day it was originally filed. The court did that, and was very nice about it. That record cost the office \$450.

The CHAIRMAN. You feel that this second record was unnecessary?

Mr. HUMPHREYS. Yes, sir. In the first place, the record that was sent up from the court below was unnecessary. All that was necessary to have been sent up was just a very few pages, perhaps 20 typewritten pages. Instead of that they sent up something like 400 or 500.

The CHAIRMAN. Do you anticipate that they are trying to discourage appeals by that kind of conduct?

Mr. HUMPHREYS. Senator, that would be just a matter of opinion. I have no reason to think that.

The CHAIRMAN. I have heard that intimated in the Five Tribes.

Mr. HUMPHREYS. I have heard it intimated, too, and I have heard it intimated at Pawhuska, but I am not charging the court with anything. I am able to carry my end of it.

The CHAIRMAN. Is there anything else?

Mr. HUMPHREYS. There is one more thing. You asked me whether I had any difficulty with appeals. We have 75 lawyers in Pawhuska, one of the best bars in the State, and, of course, these lawyers fight every inch of the ground, and I take off my hat to them for doing it; but I think, so far as I am concerned, I am able to cope with them. Of course, they throw whatever obstacles they legally can in the way, and that is good practice, I take it, as far as lawyers are concerned; but, so far as the court is concerned, I have had very courteous treatment, except once I thought I got a little the worst of it. There were five cases dismissed one morning—my watch was five minutes slow, according to the court's time, and I got there five minutes late on his time, and he had dismissed the five cases. Of course, that was a rule of the court and I told him then I would abide by it, but the next morning I was there and had the same thing done to the other lawyers.

Senator FRAZIER. I want to ask you about these attorney fees. I notice that these fees range from \$150 to \$1,225 as attorney's fees.

Mr. HUMPHREYS. You mean that is the totals?

Senator FRAZIER. Now, here is an attorney's fee of \$250.

Mr. HUMPHREYS. That is for one estate for one year.

Senator FRAZIER. What does an attorney do to earn that \$250?

Mr. HUMPHREYS. I expect Mr. Humphrey could tell you more about what they have to do than I. He is supposed to represent them in guardianship matters, preparing these reports, and making applications for the expenditures of money.

The CHAIRMAN. Every bit of the money he expends is supposed to be authorized by the court before it is spent?

Mr. HUMPHREYS. Yes, sir.

The CHAIRMAN. And the attorney must file the applications, and get the court to approve?

Mr. HUMPHREYS. Yes; but they have a guardian and an attorney both.

The CHAIRMAN. Is he attorney for himself in that case?

Mr. HUMPHREYS. There are very few of those.

Senator FRAZIER. The attorney's fees in all of these cases amount to practically half of the guardianship fees.

Mr. HUMPHREYS. That is what they are based on, one-half of the guardianship fees.

Senator FRAZIER. That is allowed by law?

Mr. HUMPHREYS. No, sir.

The CHAIRMAN. Allowed by custom.

Mr. HUMPHREYS. We had no law authorizing any amount for guardianship or attorney's fees until this Frye bill passed. It limits the amount that can be charged.

The CHAIRMAN. There has grown up, through, a sort of a custom and the custom in that county was to allow attorney's fees approximately half of what the guardianship fees are.

Mr. HUMPHREYS. That is true. Judge Sturgill made the rule, and I do not know whether it was by bar association agreement or how it was. I have heard two or three different versions of the way it came about.

Senator FRAZIER. No wonder the attorneys are interested in these cases.

Mr. HUMPHREYS. I have no criticism to offer of the attorneys. I get along with them fine, and they are all friends of mine so far as I know, and the courts have treated me nicely and I have no fights or criticisms of the court.

I have given you what I thought probably would help you in arriving at a conclusion in trying to get this bill in shape, and I thank you very much.

Mr. HUMPHREY. Might I ask one or two general questions?

The CHAIRMAN. Certainly.

Mr. HUMPHREY. You have been county judge in Atoka County for four years?

Mr. HUMPHREYS. Yes.

Mr. HUMPHREY. How do you regard the Oklahoma probate law as compared to the laws of other States?

Mr. HUMPHREYS. I think we have got as good a probate law as any State in the United States.

Mr. HUMPHREY. With reference to these fees in these 25 cases you have put into the record, did not those cases arise mostly previous to your becoming probate attorney and taking charge of the probate work of the agency?

Mr. HUMPHREYS. I think most of them did. I have not selected them with any idea as to when they occurred.

Mr. HUMPHREY. But they mostly did arise previous to your taking charge of the probate work?

Mr. HUMPHREYS. Of course, some of them, I am sure of that, have come up since I have been there.

Mr. HUMPHREY. Can you state, Judge Humphreys, an opinion as to whether or not you believe the double check as provided under the Oklahoma law and the agency together of probate matters in

Osage County is better than merely leaving it to the superintendent of the Osage Agency? Are you in a position to say as to that?

Mr. HUMPHREYS. No; I am not in a position to say.

Mr. HUMPHREY. With reference to guardians that have been appointed recently, it has been a question, has it not, of either appointing a guardian or having the Indian go into bankruptcy?

Mr. HUMPHREYS. Some of these Indians come in—I know of some who came in and asked to have a guardian appointed because they were badly in debt. Some of them have been \$20,000 or \$30,000 in debt, and that is the reason they want a guardianship.

Mr. HUMPHREY. I would like to ask Mr. Woodward a question or two.

Mr. HUMPHREYS. I want to make one explanation before I leave that. You ask which would be the best, checks under the court and the agency or the agency itself. I have never been connected with the Government agency except the seven or eight months I have been in the agency, but I know that the agency is careful, considerate, efficient, and is able to do the work efficiently that it is doing. Of course, always, where there is a double check on anything your are more likely to catch the mistakes than you are where there is not a double check. I think that would stand to reason. Does that answer your question?

Mr. HUMPHREY. Yes, sir.

Mr. HUMPHREYS. Anything else?

The CHAIRMAN. Mr. Woodward, he wanted to ask you a question.

Mr. HUMPHREY. What I want you to explain to the committee, Mr. Woodward, is the activity of the probate attorneys you have had since 1912. How much time the different attorneys have devoted to the work, and what their duties have been in a general way previous to Judge Humphreys coming in as probate attorney.

Mr. WOODWARD. Mr. Humphrey, let me ask you just what the purpose of that is, so that I will know better how to answer it. I want to see what you have in mind so I can answer it clearly.

Mr. HUMPHREY. The purpose of that is to show that up until the time Judge Humphreys took charge of the probate work practically no attention whatever was paid to probate work, and that the filing of papers was merely a matter of form with the agency; that no attorney appeared actually on behalf of the department and probate court. That is the purpose of the question.

Mr. WOODWARD. I think that I can answer that now, but I can not answer it affirmatively as the question is asked.

Mr. HUMPHREY. I want you to tell the real facts. That is what I had in mind.

Mr. WOODWARD. I think I began the work of probate attorney at the Osage Agency in 1914. The probate law was two years old at that time and there were not a large number of guardianships. It was my practice then to attend to all petitions and motions filed with the probate court. At that time it was also the practice of the Department of the Interior to conserve in the agency the funds that were accumulated to the credit of any deceased Osage Indian's estate, and up until about 1916 the administrators appointed for deceased Osage Indian estates received a fee of \$50, and the attorney's received a fee of \$25 for what services they might have rendered during the administration of that estate, and the debts payable under the act of 1912 were paid directly through the Osage Agency

and the funds which had accumulated for the benefit of the heirs were paid directly to the heirs without the intervention of an administrator. That custom, of course, left practically nothing for the attorneys or the administrators to do, and the work of looking after the estate consisted principally in determining who the heirs of the estate were, for which they were allowed the fees which I have mentioned.

After that the custom was changed, and the funds as they accumulated to the dead estate were paid to the administrators, and from then on the fees were allowed in accordance with the State law. Attorneys' fees were allowed in proportion to the fees paid to the administrators of the estate. At about that time the income of the Osages began to increase and more guardians were appointed, and a young man, from Washington, was the next attorney who looked after the probate business. His work at the office sometimes precluded his being on attendance at the court when the matters came up, but he did put in considerable of his time looking after the probate business in the probate court.

He was followed by two others prior to the coming of Judge Humphreys, but both of those men had certain duties to perform at the agency, and were not in constant attendance at the court as Judge Humphreys is. I can not state, of course, how many cases they missed there during the course of a year, or how many they attended, but it is true that they were not there from 8.30 in the morning until 5 at night as Judge Humphreys has been since he was probate attorney, because Judge Humphreys has no other duties at all except to look after the probate work. That is his job and he is on it.

While I am on my feet, Senator, and before we close, I would like to introduce into the record a statement or two that was made by Judge Wilson, who represented the bar association before the House committee. I think between January 25 and February 7, when they had these hearings over there.

The CHAIRMAN. Suppose you just tear them out and we will put them right in here.

Mr. WOODWARD. It is only a short statement.

The CHAIRMAN. Just read it, then.

Mr. WOODWARD. Mr. Howard, of Oklahoma, asked Judge Wilson the following questions:

I want to ask you in regard to what benefits financially to the Indians accrue by reason of his having this guardian?

Judge Wilson answered:

If not a financial benefit, at least a personal benefit in those things.

There being no contention on the part of the representative of the bar association at that time that there was any financial benefit having accrued from these guardianships.

And then another question, and an answer by the same representative of the bar association.

The CHAIRMAN. That is the Judge Wilson who was formerly district judge?

Mr. WOODWARD. Yes; he was sent by the bar association up here to oppose the bill before the House. Mr. Sproul, of Kansas, makes this statement:

It is perfectly natural that you and those whom you represent should be interested in your affairs, your welfare, as the controlling idea.

Mr. Wilson answered:

The member, I think, from New Mexico made a suggestion that we had a selfish interest, and I am frank to admit it is selfish.

I want that statement to go into this record here, to support the question I asked Mr. Humphrey if his interest was not a selfish interest, and his answer to the effect that it was an unselfish interest.

Mr. HUMPHREY. Doesn't he enlarge on that?

The CHAIRMAN. I will allow that to go in. Standing alone, however, it might do an injustice to Judge Wilson.

Mr. WOODWARD. You have all of the record before you, and I am calling your attention to these particular questions and answers.

The CHAIRMAN. In justice to him, his whole testimony ought to be taken together; but that can be done. His whole testimony will be printed.

(The testimony of Judge Wilson before the House Committee on Indian Affairs is printed in full, as follows:)

STATEMENT OF MR. CHARLES B. WILSON, JR.

Mr. WILSON. I am a resident of Pawhuska, Osage County, Okla. I am a member of the law firm of Wilson, Murphy & Duncan, but I do not appear before this committee as a member of the firm. I appear as a member of the bar of Osage County, selected by the bar association of that county to present to this committee our views, or the views of the bar association with respect to what changes, if any, should be made in what has been or is referred to as "the Snyder Act of March 3, 1921."

Mr. HOWARD of Oklahoma. You have been on the district bench in Oklahoma?

Mr. WILSON. I have occupied the district bench in Oklahoma in two separate districts. I was for eight years judge of the district court of the tenth judicial district of the State comprised of Lincoln and Pottawotomie Counties.

The CHAIRMAN. How long have you been in Pawhuska?

Mr. WILSON. Five years. At the expiration of my term of office in the tenth judicial district I moved to Pawhuska. About 18 months after that, in 1920, I was appointed judge of the district court of that district to fill a vacancy. I was reelected.

The CHAIRMAN. At the expiration of your term?

Mr. WILSON. At the expiration of my term in the tenth judicial district, I removed to Pawhuska.

The CHAIRMAN. Did your term expire by law or did you resign?

Mr. WILSON. My term expired by statute in that district. I then removed to another judicial district and located in Pawhuska, in the twenty-fourth judicial district of the State, where I resided and practiced law for 18 months and was then appointed to fill a vacancy on the district bench of that district, then comprised of Osage and Washington Counties. I was later elected, at the last fall election and resigned in March of this year to enter the practice of law in Pawhuska.

The CHAIRMAN. That is what I wanted to establish, that you resigned to enter the practice of law. Your law firm has quite a number of counselships for guardians?

Mr. WILSON. Yes, sir.

The CHAIRMAN. And some members of the firm are guardians?
Mr. WILSON. Mr. Duncan is guardian of either two or three estates, I am not certain of the number.

The CHAIRMAN. Are you guardian in any estate?

Mr. WILSON. I am not and have never been.

The CHAIRMAN. Are you counsel for any guardian?

Mr. WILSON. My firm is.

The CHAIRMAN. How many guardianships are within your office and how many counselships have you for guardians?

Mr. WILSON. Mr. Duncan is guardian of either two or three Indian estates. I am not quite certain of the exact number. They are guardianships which he has held for a number of years. Our firm is a firm which, as a firm, is counsel for a number of guardians. The exact number I am not able to state.

The CHAIRMAN. Can you give us an approximate number?

Mr. WILSON. I would say in the neighborhood of 30.

The CHAIRMAN. Can you give us the approximate number of guardianships which are within your office?

Mr. WILSON. That is what I mean.

The CHAIRMAN. I thought you meant counsel for guardians.

Mr. WILSON. I could not approximate the number of individual guardians we represent for the reason that a great many of them are cases in which Messrs. Murphy & Duncan represented the guardians before I went into the firm, and for the further reason that I have only been in the active practice of the law since I resigned—a short period of time—and I am not very familiar with those cases myself.

The CHAIRMAN. You are now familiar with the method of handling moneys of guardians that your law firm supervises?

Mr. WILSON. Yes, sir.

The CHAIRMAN. Can you tell at the time that these guardianships were taken out, or at the time your firm became counsel for various guardians, how much money those guardians had to their credit that was turned over to them at the time you took their guardianships and counselships?

Mr. WILSON. At this time I am unable to make that statement. The committee requested the judge of the county court to require guardians to make reports to this committee.

The CHAIRMAN. I will state to you the reason I asked those questions is that we are trying to establish, if we can, at least I am, how much money normally would be turned over to the guardian, and then, what disposition is made of those moneys thereafter? That is the idea in mind. I am not trying to ascertain the particular amount that your firm handles.

Mr. WILSON. There are various amounts turned over. Some of these guardianships have been in existence for a number of years. Some of them are more recent, and, because of the fact that I have been on the district court bench, not actively connected with the practice of law, I am not familiar with the institution of any of those guardianships with, possibly, two or three exceptions, which are cases that were instituted prior to the time I sat on the district court bench in Osage County.

The CHAIRMAN. You can not give us, even, an approximation of the amount of money which was involved at the time those guardianships were taken over by your law firm, or what now remains in

their hands, of those guardianships, or what disposition has been made of the money?

Mr. WILSON. I can not with reference to the amounts, and that is for this reason, that I was only advised late Wednesday that I would be expected to be heard, and up to that time made no detailed investigation. I had to leave Thursday in time to come here, in time to familiarize myself with conditions and be able, properly, to represent the association here.

The CHAIRMAN. When we receive reports from the Probate judge, you would then be able to take his report and determine those amounts along the line of my questions and put the same in the record?

Mr. WILSON. I think I would. The reason that I did not advise myself more thoroughly is this: That when this committee asked for these reports it necessitated every firm in town getting to work on them with their stenographers.

The CHAIRMAN. Another reason I am going into this seemingly so minutely is that in all the hearings we have held heretofore, I do not think we have been able to interrogate a guardian, any guardian as far as I know, and I would like if we can, to get a clear understanding from you just how these guardianships are handled. I am not going to ask you any more questions. Just go ahead in your own way and make your statement.

Mr. WILSON. I will make this statement that in reading the record yesterday I noticed that you had made that statement heretofore. Mr. Lucas is a citizen of our county, and he happened to be in Washington on other business than that on which I am here. I had a conversation with Mr. Lucas with reference to guardianships that he represents and asked him to appear before this committee in order that he might be examined, so that you could get his statement with reference to the manner of handling guardianships within his knowledge and his actual experience.

The CHAIRMAN. That is very nice and I am glad Mr. Lucas is here, but you are here not only representing the bar association, but you are a member of a firm which has a large number of guardianships, and it would seem that we ought to be able to get quite minutely the method of handling the affairs of these wards from you.

Mr. WILSON. As to the general method I can go very much into detail, but as to the amounts I can not do so, because I am not familiar with it. I am familiar with the details of practice.

The CHAIRMAN. You came here for the purpose of representing the bar or the bar association. I have asked you a few questions and I am willing now that you should go ahead and make any statement to the committee you see fit, if that is agreeable to the rest of the committee.

Mr. HOWARD of Oklahoma. The gentleman might make his statement and introduce Mr. Lucas in connection with it.

Mr. WILSON. Gentlemen, I am here nominally as a representative of the Osage County Bar Association, but in this matter the Osage Bar Association is reflecting the opinions and wishes of other persons and organizations in the county who are interested in the same matter and who have looked to the Osage County Bar Association for the purpose of having formulated and presented in as proper a manner as they could do so our views with reference to this matter.

While I am nominally the representative of the Osage County Bar Association, I feel that I am in effect not exclusively so but am a representative of various business interests.

You gentlemen, no doubt, know that there are differences of opinion existing in Osage County with reference to these guardianships, and I represent one side. The particular matter which brings us here at this time is the bill which has been offered by Mr. Howard, H. R. 6579, and the bill which your chairman has offered amendatory to the act of March 3, 1921. There was no serious dissatisfaction with that bill on the part of those whom I represent, but there are some features of it that did not receive the same interpretation by different people, and if the bill is to be amended I feel that some of these points could be made more definite, more clear, and more certain in the interpretation that could be placed upon them.

We have tried to make a bill which has been offered in the House by Mr. Howard, H. R. 6579, which is before you, conform as nearly as possible to the bill which your chairman introduced, with the exception of certain features in it relating particularly to guardianship matters.

The CHAIRMAN. That is, in part?

Mr. WILSON. There seems to be a question in the minds of members of this committee as to what advantage accrues to an Osage Indian who is mentally incapacitated, in having a guardian to take care charge and manage his estate over the advantage which would accrue to him by his estate being managed by the superintendent of the Osage Indian agency, and, to be brief, we feel that, as a matter of fact, the money can be sent down to the Osage Indian agency, or the superintendent of the Osage Indian agency from the Treasury in Washington and by him paid out to the Indian, possibly more cheaply than what is known as "the guardianship system" would permit, but the Indian, under the superintendency of the Osage Indian agency, would not have that close and immediate and personal attention and care with reference to the expenditure of the money and the care of his person that could be given and would be given and, in most instances, is given, by the individual guardian. When I say this, I do not mean to imply that the guardian is the guardian of the person, having the right to control in all respects the person, but he is guardian of the funds and of the money of that person, and in the expenditure of that money, he controls to a considerable extent, or influences to a considerable extent the conduct and actions of the individual ward. It is for that reason, gentlemen, that I have asked Mr. Lucas to testify here to-day because he has an intimate and close connection with the management of guardianships in Osage County, and the testimony which he will give will be illustrative, particularly so, of the benefits which accrue to the individual Indian by reason of personal management of the estate.

I may illustrate in this way: Those people, especially those who are denominated as "incompetent," are careless in their habits, careless in their health, careless of their conduct, and they are careless of the relations which they assume. They are careless in many instances of the married relations into which they enter. The women intermarry with men who have no personal regard for them, who have no care for them, and whose only purpose in intermarrying with them is to get and use their money for their own selfish personal pur-

poses. We have many instances, some of which Mr. Lucas will call your attention to, wherein the Indian woman who has married a white man is abused, beaten, and her money forcibly taken away from her.

That was the condition in this case, even under the guardianship. When the guardian gives the ward money with which to conduct her personal affairs and make her immediate personal expenditures, she is beaten and her money is taken away from her, and there are numerous instances of that kind, one of which will be testified to to-day. All of the Indians are not treated that way, but sometimes they get sick or have sickness in their family; sometimes they are given money to expend and expend it improvidently, wastefully, and that is the reason they are under guardianship. Those people, many of them, are people of good normal mentality but they are deficient in this, that they do not understand the relative values of property. They do not know the value of property. They do not know the relative value of a piece of property with reference to its money value. They feel this way, a great many of them, that "If I want a thing, I want it, and if I can get it for a certain price I will take it; if I have to pay more for it I will take it." Their idea is to get what they want.

Possibly I am going too much into detail. The thing I want to impress upon you, that will be illustrated by the testimony of Mr. Lucas, is that there is an intimate personal attention given to the ward by the guardian in many cases. I grant that sometimes it is abused but it is not the fault of the law.

I feel, in the management of these Indian estates by the department, that there will be mistakes for which no serious blame could attach to the department, simply mistakes; but in a great many, in most instances, I will say, the guardian takes a personal interest in his ward. In many instances there is no occasion requiring a great deal of personal attention, only as to the general handling of the money, and as to the handling of the money, I will state this: That it is a practice which has been adopted by guardians and one which I think is followed to a considerable extent, almost universally, by the department in advancing cash to the ward or to the Indian in this, that he might have some money with which he could take such expenditures as he wishes, and that tends in its operation to educate the Indian how to use and how to spend money intelligently. With reference to that I think there is no material difference in the policy of guardians and the policy of the department. I think the department gives the Indian money that he puts in his pocket and that he goes out and spends in small quantities as he sees fit. The guardian does that. The rule is to make weekly allowances to the ward by the guardian, which the ward takes and spends as he sees fit. Many of them spend this money more or less intelligently, some of them waste it. But it is experience that they must have and these unfortunate experiences are simply experiences in the course of education.

Another matter which I understand is being considered of a great deal of importance by members of this committee is the matter with reference to the appointment or the supervision of the guardianship by the superintendent of the Osage Indian agency for the Interior Department, and the principal objection which we have to that is this, that if it does not in fact, it does in effect, take from the care and supervision and control of the guardian and the jurisdiction of the court of guardianship matters, because of the way in which we feel that it would operate. Now, there is considerable antagonism and considerable unfriendliness, not personal, but nevertheless unfriendliness, existing between the Osage Indian agency and a great many of our citizens of Osage County.

It is the general impression that if the general supervision of appointment of guardians for all Indian estates was given to the superintendent of the Osage Indian agency that in practical operation it would result in the superintendent of the Osage Indian agency taking absolute control and absolutely dominating these appointments. For this reason, and in this way, that he would not consent, and I say "he" in referring to Mr. Wright, and I think that in the practical operation of these matters those things are to a considerable extent, referred to Mr. Woodward, who is attorney for the Osages, Mr. Wright being a very busy man and unable to do all the little things that his office requires of him. But we feel that it would result in this, as I said, that the Osage Indian agency would absolutely dominate the appointment, would absolutely control every act which it is within the jurisdiction of the court, otherwise, to control, and thereby practically, if not legally take from the court its jurisdiction. That is the objection.

The CHAIRMAN. I notice that the bill that comes to us this morning attempts to clear up that situation by making it obligatory to turn over to the guardian all of the funds of the ward. That is the first. Then the second proposition in your bill is that in case a guardian does not seemingly conduct his wardship affairs as they should be, then, upon a public hearing being held, the superintendent could remove that guardian?

Mr. WILSON. Not exactly that. He could refuse to pay to the guardian the funds.

The CHAIRMAN. He could refuse to pay?

Mr. WILSON. Yes, sir.

The CHAIRMAN. Those are the two things involved in this bill which we are discussing here now.

Mr. WILSON. One is a change. The other, as I interpret the law, is not a change, but is a provision which makes more clear the language of the act of March 3, 1921.

The CHAIRMAN. You state that because there has been a conflict and the courts seemingly have held, or at least, it has become the practice out there that a guardian handles all the funds of his ward as he sees fit under the law as you interpret it. The supposition, at least of the committee and the bureau, was that the guardian would have only the right to dispose of \$1,000 quarterly. Your bill proposes to clear that up. I think it a good idea to have it cleared up one way or the other so that there would be no misunderstanding about it in the future.

Mr. WILSON. For the purpose of making it clear, and when you say it is the practice of the guardian out there to disregard that

interpretation of the law placed upon it by the agency, I think that you are incorrect.

The CHAIRMAN. I may be, but I will ask if you can point out any one guardian who has conducted the affairs of his ward within what we suppose is the limitation of this act spending not more than \$4,000 per annum?

Mr. WILSON. It is the practice of our office to request the guardians to keep themselves within the \$4,000 limitation with such additional expenditures as are conceded, at least, by Judge Humphreys, the probate attorney, to be proper. In addition to the \$4,000, they may expend those moneys which come to them, which are not termed "restricted funds," but which come to them as rents or through other sources than through the agency.

The CHAIRMAN. But you do not think of any one wardship just now where the expenditure has not been greater than \$4,000 for any one year?

Mr. WILSON. I can not say that I recall them because I have no definite recollection as to the amounts in any case.

The CHAIRMAN. Have you gone far enough with your statement so that it would be proper to ask you now what, in your judgment, would be the effect of the law that we are proposing here, wherein we give the superintendent the power to distribute only to guardians the same as he distributes to the incompetent Indians who are still wards of the Government?

Mr. WILSON. The effect would be to take away from the courts the jurisdiction which the courts of the State have to control guardianship funds.

If you will permit me to go further, I do not contend that it is the law, but the guardian should be given, through the courts, a free hand as against the Interior Department, to control those expenditures, but the present law does give the agency or Interior Department a certain degree of supervisory control over expenditures of Indian funds and over the handling of Osage Indian estates in guardianship in this, that it requires and it has been urged by Judge Humphreys, the probate attorney for the agency, that it is a requirement mandatory, jurisdictionally requiring that it must be done, in the absence of which anything done would be absolutely void, and that, before anything is done with reference to the handling of Indian estates, the paper asking that be done and the order requiring it to be done must be served upon the superintendent of the Osage Indian Agency: notices of every hearing must be served upon him, or on his representative who has the right to be there and be heard or to expressly waive that right, and it seems to me that all of these safeguards that have been pursued and taken advantage of by the agency in view of the fact that guardians, as a rule, are honest men and that courts, as a rule, are honest men, would prevent not only rascality and unlawful conduct, but would prevent irregularities, if these things would be followed out. I want to say that within the last seven or eight months, during the time since Judge Humphreys has been acting as probate attorney for the Osage Agency, he has been in constant attendance upon the sessions of the county court. Theretofore we served these papers on him at the agency and had stamped there on that either the hearing is waived or get him to come down at some convenient time, but Judge Humphreys has adopted an entirely different practice.

He practically makes his office at the courthouse and in a room adjoining the county court room, at which place, at any time during the business hours, he can be seen, service can be made upon him of papers, and if the court is at leisure, and he is at leisure, hearings can be had, general orders made, and with possibly few exceptions, I do not think that there can be many instances pointed to—

Mr. HOWARD of Oklahoma. It has been brought out here that from a financial standpoint to the Indian the cost of a guardian is nothing more nor less than a useless expenditure to him. I want to ask you in regard to that what benefits financially to the Indians accrue by reason of having this guardian?

Mr. WILSON. If not a financial benefit, at least a personal benefit in those things. I will detail, first, the personal attention and care—

Mr. HOWARD of Oklahoma. What about finances? I want to bring before this committee evidence as to financial transactions.

Mr. WILSON. Only financial benefits, in cases such as Mr. Lucas will give an illustration of, wherein their moneys and their property are taken and handled more advantageously and with a greater degree of profit than is reasonably handled or could be reasonably done by the Osage Indian agency burdened with several hundred cases of this kind to be looked after. The county court of Osage County has adopted—why it adopted it I am not certain—but at least it has adopted this scale of fees that for each head right the guardian is paid a guardianship fee, namely, a fee of \$200, and the attorney, if he has one, is paid an attorney fee of half that amount.

The CHAIRMAN. Those figures are not the same as given by other witnesses. The fees were given as \$250 and \$125.

Mr. WILSON. The amount is \$250. I beg your pardon. The fees are \$250 and \$125, making the total cost of the guardianship per year per headright, \$375, and what court costs are made during that year, and those court costs may be a few dollars and may be a little more, but I think that the average fee bill for the year would not exceed \$25, regardless of whether there is one estate or whether the Indians own one headright or one estate or numerous ones. There might be instances where there are a great number of hearings, etc., where the costs would be greater.

Mr. HOWARD of Oklahoma. I was not trying to bring out the fees. I am simply trying to bring out this, what power has the Indian under guardianship in Oklahoma, to contract debts?

Mr. WILSON. Unless he is of that degree of mental capacity which, under the law—

Mr. HOWARD of Oklahoma (interposing). Now, get my question. What power has he, if he has a guardian, to himself contract debts?

Mr. WILSON. If he has a guardian he has no power to contract valid indebtedness.

Mr. HOWARD of Oklahoma. What power has a noncompetent Indian in Oklahoma who has not a guardian to contract?

Mr. WILSON. If he is not of that degree of mental capacity which, under the general law, would render his contract void or absolutely voidable, he has power to contract indebtedness, but there is a limitation placed upon his ability to pay that indebtedness which he contracts out of the funds which come to him through the Government. There is that difference. There is no reason in the law why an

incompetent Osage Indian, and what I mean by an incompetent Osage Indian is one which the Federal law considers incompetent by reason of his inability to sell his land, but in giving an opinion of that kind, it does not comprehend one declared or adjudicated incompetent under the State law.

Mr. HOWARD of Oklahoma. As I understand the Oklahoma laws, if a man has gone into probate court and been declared an incompetent and had a guardian appointed for him, no debt that he may contract is valid against him.

Mr. WILSON. That is true.

Mr. HOWARD of Oklahoma. If I am properly informed, one of these noncompetents who has not been into the courts of Oklahoma, and had himself declared incompetent under the laws of Oklahoma, as a citizen of Oklahoma, has a right to vote in Oklahoma and has a right to contract debts, and any debt contracted by him are valid against him.

Mr. WILSON. That is true.

Mr. HOWARD of Oklahoma. Do you know of any cases where noncompetents have contracted debts that are outstanding or later have been paid?

Mr. WILSON. Many such debts were contracted, all of which were paid or adjusted in some way by the department after the enactment of the act of March 3, 1921.

The CHAIRMAN. I think that Mr. Howard's question was directed to what has taken place since March 3, 1921.

Mr. HOWARD of Oklahoma. Yes.

Mr. WILSON. Since then it is a matter of common knowledge. I have no personal knowledge of these matters because I do not have particular interest in any of these guardianship matters, and it is only for the purpose of familiarizing myself with certain details that I appear before the county courts at all of late, but I recall now two instances (I do not know the names of the Indians), but they were instances related to me by Mr. Wise, now acting superintendent of the agency in the absence of Mr. Wright, but who is special disbursing agent of the agency, wherein he says that he knows of two Indians under the control of the department who have become indebted each in the sum of about \$60,000. I do not know who they are.

The CHAIRMAN. Those debts were contracted since March 3, 1921?

Mr. WILSON. Since March 3, 1921, I am informed, and they are debts that can not be paid or the enforcement of the payment of them can not be made out of Indian funds, under our interpretation of the law.

The CHAIRMAN. Suppose to-morrow or the next day a guardian should be appointed by the court for those two Indians who have those debts, what would happen then? Would the guardian under the law have the power to pay those debts?

Mr. WILSON. Under my interpretation of the law, he would have the power to pay those debts, and under the practice which, in some cases has been indulged in, it is done. There are many instances without any serious objection or without any objection at all upon the part of the Indian Department.

The CHAIRMAN. Of course that very practice of getting an Indian in debt and getting him a guardian might be an incentive for more guardians, might it not?

Mr. WILSON. If I understand that, possibly that was an incentive to getting a good many guardians appointed since 1921.

The CHAIRMAN. I have made this suggestion so many times that I dislike to do it again, but we find there are something over 400 guardianships, over 200 guardians, and only slightly over 200 incompetent Indians within the jurisdiction of the agency at the present time. What this Committee has been trying to find out is why so many incompetent Indians have taken out guardianships; whether the effort was largely with the Indians to get a guardian or whether it was largely with those who desired to be guardians and counsel, that has created so many wards.

Mr. WILSON. There may be instances whereby the creditors have induced them to come under guardianship. There are instances, also, where they themselves in many cases of that kind have become so much indebted that they are not extended the credit that they want.

The CHAIRMAN. We have all understood all the time that the citizens of Pawhuska and the surrounding country are law abiding and intelligent people and understood or, at least, ought to understand, the language of this act, and those who get the Indians in debt to them, who are wards of the Government, must know that they have no means to collect those bills from the Indians until they are taken out from under the wardship of the Government.

Mr. WILSON. That is true.

The CHAIRMAN. It is singular that people, knowing they have not credit, would get an Indian in their debt to that extent. They must have some idea of how they are going to get the money, somewhere, somehow, some time.

Mr. HOWARD of Oklahoma. What I was trying to bring out is this, that under the State laws of Oklahoma in probate matters, if an Indian has a guardian it is impossible for him to make a debt that will be a valid debt against him or against his estate but, as the condition exists, and it should be permitted, and that is what I am trying to bring out, an Indian may, being incompetent, and as a citizen of Oklahoma he is, under our State laws, eligible to contract debts, although he has been declared incompetent by courts and given a guardian. Probably the agency may never pay the debt as long as he is living but it will be a debt that runs against his estate in the final adjudication of it, and therein is a situation which should be remedied.

The CHAIRMAN. I agree with the gentleman from Oklahoma but I do not see how you can come any nearer to remedying that than the way we have started out to do it in this bill. There is no way that you can keep a citizen from contracting a credit against anyone if they desire so to do.

Mr. HASTINGS. You can make all future contracts of that kind void as to restricted Indians in this act, if you wish to.

Mr. HOWARD of Oklahoma. That should be done, because under the State laws of Oklahoma in probate matters those would not lie against his estate if contracted by him as an incompetent Indian, but if contracted by him as a noncompetent Indian, they would be.

The CHAIRMAN. I see your point now. I did not in the beginning.

Mr. HOWARD of Oklahoma. Mr. Woodward says no.

Mr. LEAHY. That is not correct.

Mr. WOODWARD. Under the act of 1912, the act giving jurisdiction to probate courts, such debts as Mr. Howard refers to, can not be collected from an incompetent Indian's estate because Congress restricted debts collectible from incompetent Indians' estates to the last sickness and funeral expenses. The point that Mr. Howard has raised, I think, is very adequately covered in our proposed bill.

Mr. HOWARD of Oklahoma. In what way?

The CHAIRMAN. I would like to have that point cleared up right here.

Mr. HOWARD of Oklahoma. I would like to have it cleared up right here. As regards the right to interfere in probating of estates within the State of Oklahoma, with their laws.

The CHAIRMAN. Some lawyer can answer that question.

Mr. MORROW. You say under the law they are citizens of Oklahoma.

Mr. HOWARD of Oklahoma. They are all citizens of Oklahoma under our constitution.

Mr. MORROW. Under the original law is there no limitation on the amount that one without a guardian, an incompetent, can receive?

Mr. WILSON. There is no limitation of law to contract debts, unless it is in this law.

Mr. HOWARD of Oklahoma. Unless it becomes a lien against his estate.

Mr. WILSON. If he had any unrestricted estate, it would.

Mr. HOWARD of Oklahoma. Citizenship rights vested upon an Indian by the constitution of Oklahoma, would not have any limitation, but the Federal Government restricts the expenditures of moneys which the Government is holding in trust for the Indian.

Mr. WILSON. It does that. Those debts improvidently contracted by an unrestricted Indian can not be paid out of those funds.

Mr. GARBER. Until there is a guardian appointed or an administrator.

Mr. WILSON. The construction that is placed on this law is this: That if there is a guardian appointed, that that guardian can pay this indebtedness because the funds thereby become unrestricted, and that is the practice. There might be a serious question whether that could be legally done or not, but I know it is practiced.

Mr. GARBER. I make this suggestion that what Mr. Howard has in mind is one of the most important things connected with the whole question, and that is the legal limitation upon the power of the incompetent Indians to contract indebtedness. When you absolutely prohibit their power to contract indebtedness, then you are going to conserve, you are in a position to conserve their funds for their own best interests. The evidence in these hearings to my mind has just simply disclosed riotous extravagance, reckless, gross—I will not say mismanagement—but management of the fund that can not under any circumstances be reconciled with any personal supervision by a guardian whatever. I believe you said that since the presence of Judge Humphreys in the county court has taken place, that there has been a check put upon a good many matters in the county court and with reference to the handling of estates that have made for economy. Is that right?

Mr. WILSON. That is correct.

Mr. GARBER. Then, in that event, in so far as the Interior Department was extending its supervision, it had a good effect, did it not?

Mr. HOWARD of Oklahoma. I will call your attention to this situation: That an Indian in the Oklahoma courts, under a guardian, where the court and guardian are dissipating his fortune, has a remedy through the State courts and the Governor of Oklahoma in removing that court and that guardian, whereas the Indian has no help that he may get, in the dissipating of his money by riotous handling by the Interior Department. We have removed probate judges out there. Governor Cruce removed them.

The CHAIRMAN. They have even removed a governor.

Mr. GARBER. I venture to say the records of your county court will not show the removal of half a dozen guardians, although I know nothing about the facts, since the organization of the county. In the county in which I live in Oklahoma there are a great many estates that are under supervision, and I am unable to recall the removal of over two guardians. I do not believe you will find it. The administration of their guardianship is an elephant on the estate of any ward. It is only in rare cases where personal, friendly supervision of the guardian goes to the extent of seriously caring for the person that it makes for economy. It is a burden that falls upon any estate. It operates upon any estate. The administration of guardianship affairs is, to great extent, a burden. Is not that true, Judge, in regard to white people?

Mr. WILSON. The administration of every estate is more or less a burden because it is the administration of an estate by one person belonging to another person who must be paid therefor. It is a condition with which those who are incompetent, either by minority or by reason of some mental incapacity, are, of necessity, subjected to. That is all there is to it.

The CHAIRMAN. May we have Mr. Woodward clear up this question.

Mr. WILSON. In answering the suggestion of the judge, may I say this, that this condition with reference to the supervision of courts by the agency, such as is being conducted right now by Judge Humphreys, is one which could always be. It is not pertinent to any new law; it is one which could have always been followed out. That condition could have existed all the time and, if it has not been so, it is merely because of the inattention of the department itself to that feature of its authority over the courts of Osage County in the administration of these Osage estates. I will get down to bed-rock.

The CHAIRMAN. That is where we want to get, right to the bottom of all these facts.

Mr. WILSON. If all these safeguards granted by the State and Federal law with reference to the handling of estates, particularly the estates of Osage Indians, are followed up then there has never been any better or safer system devised.

We have a system relative to the administration of guardianship estates of Oklahoma which is as good as any system in any State of the Union. It is a system to which the white people have to subject themselves; a system which, under the State laws of Oklahoma, the Indian has the advantage that is quite distinct and an additional advantage for the protection of the rights of the Indian:

the Indian Department has the right to supervise the Indian, has the right to be there, not alone by his guardian who is legally presumed to represent him or to protect his rights: not only the guardian but under the control of the Osage Indian Agency at such time; and if the guardian slips in his sworn duty as trustee of the funds of that Indian, then there is an opportunity for somebody else to be there. Not only is that an opportunity, but a duty, made a duty by the laws of the United States and an act of Congress for him to be there and put a check upon any irregularity or any mistake which the guardian might make with reference to it.

Mr. GARBER. It is admitted at the outset that the system of probate law in guardianship under the law of the State of Oklahoma is not the Federal system. The system is about as good as any State has yet devised. It is not the fault of the law but it is in the administration of the law.

Mr. WILSON. That is true.

Mr. GARBER. That has appeared in evidence. What would you say of the administration of the law, where witness after witness, brought on the stand, testified that he had received from \$8,000 to \$10,000 a year, living on a farm and was still, after spending it all, running in debt and getting behind, not spending that money for ordinary necessities of life and having few of the modern conveniences?

Mr. WILSON. Are you referring to testimony given by Indians?

Mr. HOWARD of Oklahoma. That was not an Indian that had a guardian.

Mr. GARBER. It will be valuable for the other side of the case.

Mr. WILSON. Do you refer to the testimony given by Indians that they do it?

Mr. GARBER. Yes.

Mr. WILSON. Then that is due entirely to mental incapacity of the Indian.

Mr. GARBER. Finances especially.

Mr. WILSON. Yes, sir.

Mr. GARBER. Are you able to show any difference between the administration of the estates by the department and the administration by the guardians?

Mr. WILSON. Yes, sir.

Mr. GARBER. Is it not the case that the guardians under guardianship proceedings have not only expended the \$4,000, but moneys in addition to that such as rentals?

Mr. WILSON. In some instances.

Mr. GARBER. In nearly all instances.

Mr. WILSON. I can not say that.

Mr. GARBER. Were you able to recall a single instance where the guardian kept the ward within \$4,000?

Mr. WILSON. I think there are many of them. I can get them when I get this report which your chairman has requested. It ought to be here now, or, at least, some of the reports. Judge and Mr. Chairman, Mr. Lucas is here and can give testimony with reference to the fact, and I would like to have him heard right now.

Mr. HASTINGS. Have we called for the data in each case from Osage County?

The CHAIRMAN. We have. We have asked the probate judge and he has agreed to send it here and said he expected to have here this

morning a complete statement of all those four hundred and odd guardians. It has not arrived.

Mr. HASTINGS. Is that statement expected to show the amount of money turned over to all of these guardians? Is it also expected to show how much the guardian in each case has to the credit of his ward, and is that statement expected to show the annual cost both of guardians, cost of attorneys—the cost in each case?

The CHAIRMAN. It is supposed to be a complete report of each guardian and also what has been done with the funds and how they have been disposed of.

Mr. HOWARD of Oklahoma. I think, as a companion to that statement, there should, at least, go into this record an estimate showing what it would cost the agency in all these guardianships if funds were turned back to them to administer those estates so that we may draw a line between the cost of administration by the agency and by the courts.

The CHAIRMAN. I will read a telegram that I sent to Hon. L. A. Justus, jr., county judge of the probate court of Pawhuska, Okla.:

Committee on Indian Affairs has, by motion, requested you to have all guardians of Indians under the jurisdiction of your court prepare immediately report showing the amount of actual cash received from all sources; amount of expenditures from property, personal or real estate, and amount of cash on hand at this date, the amount of money paid and received as guardian fees and the amount paid for attorney fees.

In reply to that I received this telegram:

Your telegram received. This is a big job. Am glad to comply with committee's report and will endeavor to have report there by next Monday.

Mr. HASTINGS. He could not possibly have that report, Mr. Chairman. He could not call upon these several guardians for their report and have a synopsis of their report by to-day.

The CHAIRMAN. I have given the facts.

Mr. WILSON. I have just been advised that part of those reports are here, at least copies were received this morning since we left the hotel. I presume the originals are here in the mail, perhaps in your mail.

The CHAIRMAN. They have not been received this morning.

Mr. WILSON. It is a great, big job, but the purpose was to comply with it as rapidly as possible.

The CHAIRMAN. We had no idea when we sent the telegram that we would have the report this morning. The judge suggested that himself.

Mr. HASTINGS. I will suggest that it is impossible for the county court to have these reports from the guardians and a synopsis of them made and have them up here.

The CHAIRMAN. I agree with you.

Mr. HASTINGS. If the report is to be complete.

The CHAIRMAN. We did not expect it, but I do not think we should go into that phase of it this morning, unless it is complete.

Mr. WOODWARD. The clause I had in mind, in answering Mr. Howard's proposition, is this one: It is not quite so broad as that brought out by Mr. Howard and Judge Garber and we would be

very glad to amend our bill to cover more fully the matter. This is the way the bill now reads:

Property of Osage Indians not having certificate of competency purchased as hereinbefore set forth.

Mr. HASTINGS. I thought that applied to lands.

Mr. WOODWARD. Property. The word "property" is intentionally used.

The CHAIRMAN. We might hear Mr. Lucas now.

Mr. WRIGHT. Judge Wilson, I gather from your statements that you consider the department has the right under the act of 1912 to supervise to a certain extent.

Mr. WILSON. Yes, sir.

Mr. WRIGHT. But advisory only in the matter of expenditures of the guardian.

Mr. WILSON. That is advisory only, but you have the right to appear as attorney and make every legal objection and take every appeal from the county court to the court of last resort as the law provides.

Mr. WRIGHT. Has the bar association as a body the right to appear there and object to any procedure?

Mr. WILSON. No, sir.

Mr. WRIGHT. It has not?

Mr. WILSON. No, sir.

Mr. WRIGHT. Has anybody a right to appear there independent of the superintendent?

Mr. WILSON. Except the superintendent, no, sir, nobody has a legal right to interfere with the court procedure except some one authorized to do it.

Mr. WRIGHT. Do I understand you to say there is no protection to the guardian in his expenditure except what the court may authorize, unless the superintendent goes there to object?

Mr. WILSON. No, sir. There is no protection at all against a mistake that the Supreme Court of the United States might make.

Mr. WRIGHT. If that is the case the burden is upon the superintendent all the time.

Mr. WILSON. The burden and duty is and must be upon the superintendent. The burden is upon the superintendent.

Mr. WRIGHT. But he can only object. He can not in any way prohibit payment of accounts authorized by a guardian's report.

Mr. WILSON. He can not override orders of a court of special jurisdiction in the State of Oklahoma.

Mr. HOWARD of Oklahoma. If he is an unfriendly court he can accomplish nothing.

Mr. WILSON. We do not want the superintendent to have the power vested in him to override the jurisdiction of the court. That is what we object to. We do not object to supervision, to his being there. If there is any rascality we want it stamped out, but we do not want power vested for the superintendent of the Osage Indian agency to do those things which, in effect, override a special jurisdiction of the State court. That is just the whole thing.

The CHAIRMAN. That is a good statement.

Mr. WRIGHT. The superintendent is required by the department, as far as possible, to protect the interests of full-blood restricted Indians, is he not?

Mr. WILSON. And every other Indian.

The CHAIRMAN. He answers by saying every other Indian. That would mean Indians, as I understand it, who are unrestricted.

Mr. WILSON. I think so.

The CHAIRMAN. But he puts you in the position of looking after the interests of Indians having a certificate of competency under guardians.

Mr. WILSON. I may have misunderstood. He has the duty to appear in court and defend the rights of an Indian who is competent.

The CHAIRMAN. But is it his duty under the law to do it?

Mr. WILSON. I think so.

The CHAIRMAN. We want the facts, not what you think. You have made a statement in regard to an incompetent Indian.

Mr. WILSON. They do not do it. They are inclined to let the Indian who is not restricted go without supervision.

The CHAIRMAN. Has he any supervision now?

Mr. WILSON. I think he has.

The CHAIRMAN. After the issuance of a certificate of competency?

Mr. WILSON. They do it.

The CHAIRMAN. On the issuance of a certificate of competency, all the money is turned over to an Indian. Where is the supervision after that?

Mr. WILSON. In any form; if he is put under guardianship he has the right to appear there and see that his rights are protected in the courts.

The CHAIRMAN. But when a guardian is appointed that is usually in the case of noncompetent?

Mr. WILSON. Yes, sir.

The CHAIRMAN. I can understand his duty there, but I can not understand his duty to a competent Indian, who has been given a certificate of competency, and who then becomes his own free agent.

Mr. MORROW. When you say "unrestricted," what do you mean by "unrestricted"—one who has the rights of a citizen of the United States?

Mr. WILSON. There is confusion over the word "restricted." The Osage Indian act, the Federal act, designates certain classes of Indians as "unrestricted," and that is, all Indians to whom the Secretary of the Interior has given what is termed "certificate of competency." It means that he has examined into the mental qualifications and fitness of a man and has come to a determination that he is fit, mentally, to take and manage his own estate and sell his real estate.

Mr. MORROW. Then the Indian agent has no jurisdiction over that Indian at all?

Mr. WILSON. Not at all. He is put under guardianship by action of our State courts. This idea that many people have that one who is declared incompetent is of a greater degree of mentality, is purely imaginary, because most of them are rather incompetent. Many of these Indians who have certificates of competency are, at the same time, under guardianship.

Mr. MORROW. Your State court in Oklahoma, assumes certain jurisdiction after they have been turned loose by the Interior Department?

Mr. WILSON. Yes, sir. Under the State law we assume jurisdiction. We have, under the law of the State of Oklahoma under certain circumstances, when they are shown to exist, a provision which ap-

plies to any man, white man or Indian, who is incompetent to manage his own business.

Mr. MORROW. The Indian agent is manager on the part of the Government?

Mr. WILSON. Yes, sir.

Mr. MORROW. As soon as the Government turns loose the particular party for whom he is manager, your courts in Oklahoma can not put him under control of that party because he is a Government man.

Mr. WILSON. That is true. But even, if an Indian who is a member of an Indian tribe, is in the hands of a guardianship the statute makes it the duty of the superintendent, if an Indian is put under guardianship, to protect his rights, and pursuant to that to be in the probate court; it gives him the right to be there to see that his rights are protected.

Mr. MORROW. Is he not released from the tribe when he is declared released by authority of the Interior Department? Does not that release him from the tribal rolls, as far as the Government is concerned?

Mr. WILSON. We do not consider that is true. There is a contention on the part of some, which I do not adhere to myself, that Indians turned loose since the allotment act of 1906 are not members of the tribe, and there are suits pending in which that question is to be determined.

Mr. WRIGHT. I want this committee to get clear the fact, if I can, that the superintendent is charged with the duty with the Osages here which is rather difficult to accomplish. The only thing that the superintendent can do in expenditures made by guardians is to protest against certain expenditures, and that is all. Are there not many cases, many, many cases, where the superintendent objects, or his representative, to the county court, to certain charges made by guardians, to certain expenditures, which are overruled and allowed by the court?

Mr. WILSON. Yes, sir; otherwise, if the court had to observe your admonition in every case, he would thereby have arrested his jurisdiction in the case of Indians.

Mr. WRIGHT. It is not ambition on the part of the superintendent to seek such supervision? Please let that be understood; the superintendent merely wants to know what he is held responsible for and what he is not. The superintendent of the agency, I think, would be very glad, indeed, if he could turn over all of that money to guardians and forget it. He gets no additional compensation for handling it, but he is expected by the Government to protect those funds of the Indians, and if he does not, he is responsible for it. Suppose the superintendent, in paying debts of some Indians, takes receipt from the party in full for payment of debt, and that thereafter there is a guardian appointed, and the guardian accepts a note from the Indian from the white man that the white man has taken up debts that have already been paid before to the superintendent in full, given his receipt in full, and allowed by the court against the superintendent's protest? What would you say as to that?

Mr. WILSON. I understand what you have reference to.

Mr. WRIGHT. That is what the superintendent is up against.

Mr. WILSON. With reference to a few circumstances which occurred soon after the passage of the act of March 3, 1921, certain indebtedness was adjusted by the department and the amount adjudged to be due was paid, wherein the creditor thereafter took notes from the Indian and wanted the balance—

Mr. WRIGHT. He had already given receipt to the superintendent in full for settlement of the account. That is another proposition.

Mr. WILSON. I do not know about that. I only know of one case, as you probably only know of one case. Since that occurrence I have had some connection with it but at the time I knew nothing about it. If that was an unlawful act, not authorized by the law, in that particular case the man thought he was acting within his power and thought he was acting under the authority you had tacitly given him to deal with the Indian who had his legal right to contract, and if he did, the balance was due, under the circumstances he was asked to pay the note on which the balance was due; that he could give it and collect it. That is the position—

Mr. HOWARD of Oklahoma. I would suggest that this phase of the matter may be taken up later, so that Mr. Lucas may now take the stand.

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COMMITTEE ON INDIAN AFFAIRS,

HOUSE OF REPRESENTATIVES.

Washington, Wednesday, February 6, 1924.

The committee this day met, Hon. Homer P. Snyder (chairman) presiding.

The CHAIRMAN. The committee will come to order. I think at the time we recessed the witness had finished and it would be in order for Judge Wilson, who had stepped aside for the purpose of hearing that witness, to resume his testimony this morning.

I would like to say for the information of those members of the committee who were not present heretofore, that Judge Wilson is here in behalf of the Bar Association of Osage County, Okla. He is a lawyer, a member of a firm of lawyers who are guardians and counsel to several guardians, and therefore more or less qualified to give us direct information as to the benefits of guardianship over supervision by the department of the noncompetent Indians, if such Indians should remain under the wardship of the Government.

Mr. HOWARD of Oklahoma. I will supplement that statement by saying, as I know will be borne out by my colleagues on this committee, that no man in Oklahoma stands higher at the bar than does Judge Wilson.

The CHAIRMAN. I am willing to admit that.

Mr. GARBER. Not only as a lawyer but as a man of high reputation and integrity.

The CHAIRMAN. I wanted Mr. Roach to have some idea of the previous line of testimony before we started. We have gone through a preliminary investigation and he had stepped aside in the interest of another gentleman from Oklahoma, who was also a guardian, but turned out to be a guardian for only nonrestricted Indians, which did not give us quite the information that we would like to have had. No guardian has appeared here, so far, for an incompetent Indian. It has been difficult to draw comparisons between

the wardship of the Government having the Indian under supervision and the wardship under guardians appointed by the court.

In commencing the hearing this morning I have in mind a conversation I had with Mr. Wilson on Sunday, in which the suggestion came up that there was a movement out there to get these Osage Indians to put up \$3,000,000 in some big plantation or hacienda in New Mexico, in Mexico, or somewhere else. If the gentleman wants to tell us wherein the Osage Indian would be benefited, or who are the fathers of the movement and why, I would be glad to hear it.

STATEMENT OF MR. CHARLES B. WILSON, JR.—Resumed.

MR. WILSON. Some of you were not here the other day when I offered the testimony of Mr. Lucas with reference to the advantages which the Indian has who is under private guardianship over the advantage which he has by being under Government guardianship, and that testimony was offered primarily for the purpose of showing the manner in which these guardianships are handled, and for the purpose of showing to the Committee the amount and extent of the personal attention which the guardian pays to his ward, which an officer of the Government cannot reasonably be expected to give his ward. I cannot see the distinction with reference to that point between the fact that the wards for whom Mr. Lucas was guardian were incompetent, and a case wherein the wards were not incompetent, or where the wards were non-competent.

However, we have here this morning two gentlemen who are guardians for non-competent Indians, and I am asking the indulgence of this committee at this time, or later, to offer the testimony of these two gentlemen. They are present in the room this morning.

THE CHAIRMAN. What do you mean by non-competent?

MR. WILSON. I mean Indians who have not certificates of competency authorized by the Secretary of the Interior or who are not of more than one-half white blood.

THE CHAIRMAN. Do you mean that they are what we nominally call "incompetent Indians"?

MR. WILSON. Yes, sir, using the word with reference to the use of the term in our various Osage statutes.

MR. HASTINGS. You mean restricted?

MR. WILSON. Yes, sir; restricted Indians. These Indians are full-blood Indians.

THE CHAIRMAN. Let me tell you something that will clear up your mind (and what I have in my mind) which may not be entertained by others. The nonrestricted Indian who finally goes under a guardian has had a period in which he has handled all of his own money.

MR. WILSON. Yes, sir; that is true.

THE CHAIRMAN. When he is taken over under a guardian he is in an entirely different situation from the incompetent Indian who goes out from under the supervision of the Indian Bureau into a guardianship.

That is one distinction between the two that I make, and the reason I am trying to find out is why an incompetent Indian taken from under the supervision of the superintendent out there is better off than he would be if he stayed where he was. What I am trying to get at is this: When an incompetent Indian takes a guardian he leaves his status under the superintendent in an entirely different

shape than the competent Indian who has been without restriction for a time and gotten himself heavily involved in debt. What I am trying to find out is, how have the affairs of the ward, who has a guardian outside of the superintendency, been taken care of or his affairs conducted, his resources conserved, compared to what would have been the case if he stayed within the jurisdiction of the superintendent? Is that clear to you?

Mr. WILSON. Yes, sir

The CHAIRMAN. That is the reason I say I am not particularly interested in what happens to the nonrestricted Indian, because he is supposed to be almost a full citizen; has his rights; can do what he pleases with his money until he gets into a hole and is forced to have a guardian again. We have not any supervision over the nonrestricted Indian, as I understand it. We are only interested in the restricted Indian.

Mr. HOWARD of Oklahoma. We have before us now two measures. There are certain points of contention as between these two measures by the friends of each. I think it would be well to start with a foundation by trying to iron out the contentions between these two measures by asking the witness to make a concrete statement as to the differences between the two.

The CHAIRMAN. I thought we went into that thoroughly Monday.

Mr. HUDSON. Is the restricted Indian one who has a guardian under the Indian Office or Indian agent, or is he under the courts of Oklahoma?

The CHAIRMAN. That comes about like this, as I understand it: An Indian gets rid of his restrictions and has turned over to him everything that he has, to do with it what he pleases. Many of them, after two weeks or six months, run through their income and inheritance, and, finding themselves heavily in debt go into court, or somebody does, to get a guardian appointed. At that point the Indian comes back slightly under the supervision of the superintendent to the extent that the superintendent has the right to go into court and protest against the things being done to the Indian that ought not to be done, but he had no real power. The agent has the right to go in with his probate attorney and protest in behalf of the Indian, but the courts are supreme.

Mr. GARBER. Just for a brief, concise statement of the legal status of the three classes of Indians, I would like to have the attorney, Mr. Woodward, make that for the record.

Mr. WOODWARD. What three classes?

Mr. GARBER. There is the restricted Indian. There is the Indian who has been given a certificate by the Interior Department, and then there is the Indian who has had the guardian appointed. Could you define those three different classes and explain their legal status?

Mr. WOODWARD. If you do not mind my taking a little time.

The CHAIRMAN. No.

Mr. WOODWARD. Under the act of 1906, known as "the Osage allotment act," the Secretary of the Interior, upon application of any adult member of the Osage Tribe, and after investigation made by the Secretary, may issue to such an Indian, if found to be able to handle his affairs, a certificate of competency, and under that law the certificate of competency removes restrictions on alienation of his surplus land, and that was all it did. It had no reference whatever to his money and it left his homestead still inalienable. Under the

act of 1921, which is commonly called "the extension of the mineral period bill," Congress provided that all Indians who had certificates of competency should receive quarterly their full income, thereby making a certificate of competency apply to money. The Indian who has a certificate of competency has unrestricted use of all of his income and also unrestricted use of his surplus land. If he is less than half blood the act of 1921 removed restrictions against alienation of his homestead, so an Indian of less than half blood, with a certificate of competency now, has all of his land removed from the jurisdiction of the Government and all of his funds, without any supervision of the Government.

Mr. ROACH. That is, the income?

Mr. WOODWARD. Yes.

Mr. ROACH. That in some instances amounted, and does now amount, to considerable.

Mr. WOODWARD. Yes; the last three years it would average about \$10,000 a year.

Mr. SPROUL. Then the difference between the full blood who has his restrictions removed and the less than half blood is that the full blood does not have the right to alienate his homestead?

Mr. WOODWARD. That is exactly right, and that is the only difference in the present law. The restrictions are still on full-blood homesteads. Under the act of 1918, such an Indian can sell his homestead with the approval of the Secretary of the Interior.

There have been many guardians appointed under the act of 1912 and there has been so much confusion with regard to the jurisdiction of the department under that act that I would like to read a section of that law. It is section 3 of the act of April 18, 1912, which reads as follows:

That the property of deceased and of orphan minor, insane, or other incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the State of Oklahoma—

That does not have reference to certificates of competency at all—
which are hereby extended for such purposes to the allottees of said tribe, shall, in probate matters, be subject to the jurisdiction of the county courts of the State of Oklahoma, but a copy of all papers filed in the county court shall be served on the superintendent of the Osage Agency at the time of filing—

Mr. GARBER. Right there the chairman says it gives the Interior Department the privilege of examining all papers filed in the case or copies of them, but gives him no jurisdiction or power to act.

Mr. ROACH. But he does not act.

Mr. WOODWARD. I will finish the quotation:

and said superintendent is authorized, whenever the interests of the allottee require, to appear in the county court for the protection of the interests of the allottee. The superintendent of the Osage Agency or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators, and guardians or other persons having in charge the estate of any deceased allottee or of minors or persons incompetent under the laws of Oklahoma, and whenever he shall be of the opinion that the estate is in any manner being dissipated or wasted or is being permitted to deteriorate in value by reason of the negligence, carelessness, or incompetency of the guardian or other person in charge of the estate, the superintendent of the Osage Agency or the Secretary of the Interior, or his representative, shall have power, and it shall be his duty, to report said matter to the county court and take the necessary steps to have such case fully investigated, and also to prosecute any

remedy, either civil or criminal, as the exigencies of the case and the preservation and protection of the interests of the allottee or his estate may require; the costs and expenses of the civil proceedings to be a charge upon the estate of the allottee or upon the executor, administrator, guardian, or other person in charge of the estate of the allottee and his surety, as the county court shall determine.

That is the jurisdiction, supervision, direction or control about which so much has been said in these hearings, devolving upon the Osage Agency. The agency has only the right to report such infraction of the law as they may know about to the county court and the law says that they may prosecute such cases.

Mr. GARBER. Under the laws of the State of Oklahoma in the county court.

Mr. WOODWARD. Yes, sir, or in the appellate court.

Mr. HASTINGS. That is the act of 1912.

Mr. WOODWARD. Yes, and we have always contended, although this has been disputed very vigorously, that the Indian who has a certificate of competency but who afterwards has a guardian appointed for him, and who comes under the jurisdiction of the probate court, under the terms of this act so far as the agency is concerned, the superintendent has the same right to appear and be heard on behalf of that Indian as he has for the Indian who has never received a certificate of competency.

Mr. GARBER. Under that act have any guardians ever been removed? Is the act itself workable and practicable? Does it amount to anything in actual practice?

Mr. WOODWARD. That is one point that we are trying to emphasize before this committee. Judge Garber has lived in Oklahoma a long while, and what he said the other day with regard to the removal of guardianship applies in Osage County as well as in other parts of the State. Guardians are very rarely removed, but we have had, in the last eight or nine months, a few removed in Osage County.

Mr. HOWARD of Oklahoma. In how many cases were attempts made to secure removal of guardians on the part of the superintendent?

Mr. WOODWARD. It would be impossible to say, but the demands have covered a period, to my personal knowledge, of over seven years.

Mr. HOWARD of Oklahoma. Make an estimate of how many he has demanded be removed.

Mr. WOODWARD. No. I would not want to make a guess; I might miss it a mile.

Mr. HOWARD of Oklahoma. How many have been removed?

Mr. WOODWARD. Probably four, five, or six.

Mr. HASTINGS. Within what length of time?

Mr. WOODWARD. Six or seven years.

Mr. HASTINGS. Four, five, or six total demands by a representative of the agency in six or seven years?

Mr. WOODWARD. Yes, sir, and we have now pending in the district court somewhere between 75 and 100 appeals from orders of the probate court.

Mr. HOWARD of Oklahoma. Of course, everybody understands that every man has a right to appeal his case.

Mr. WOODWARD. Yes, of course.

Mr. HOWARD of Oklahoma. The county court can not be blamed for the fact that they were not removed, if there were appeals?

Mr. WOODWARD. I am not criticizing the court. The point I am making is this, that there is lack of force or power, as far as the Government is concerned, in this bill. The attorney for these Indians could appear just the same as the superintendent could. The next friend of any ward could appear just the same as this act authorizes the superintendent to appear, but I do not see any power vested in the department at all in this law. I do not think it means anything vital.

Mr. HOWARD of Oklahoma. You are a practicing attorney of Osage County?

Mr. WOODWARD. Yes, sir.

Mr. HOWARD of Oklahoma. Have you any recent evidence to show that the county courts of Osage County, Okla., are any more lacking in handling matters of probate of Indians than of other citizens?

Mr. WOODWARD. I have not had any experience with the handling of other citizens' estates.

The CHAIRMAN. Of course, it is intensified by the fact that there are 400 incompetent wards who have guardians.

Mr. WOODWARD. It is fair to state that practically all of the time of the county court is taken up with Osage business, as far as probate matters before the court are concerned.

The CHAIRMAN. Of course, those things are intensified, like all other things, as when you find a bad man in a church some people think the whole church is bad.

Mr. HASTINGS. How do you distinguish between a really non-competent Indian and one for whom a guardian has been appointed? To make myself clear, as I understand it, there are some 435 guardians.

Mr. WOODWARD. Guardianships.

Mr. HASTINGS. There is no contention that a great number of those are really incompetent, except that they are restricted, as I understand. There are some really incompetent Indians who are mentally incompetent.

Mr. WILSON. Yes; I know what you mean.

Mr. HASTINGS. How could we distinguish, how could you define, so that it could be used in language in a bill, the difference between the two, where there is a guardian for what you would call "a restricted Indian" and a guardian for the really "incompetent Indians"? Would the records of the court show any difference between the two? Here is a man, to use a plain term, who is a crazy man. He should have a guardian appointed. Here is another man, a full-blood Indian, a restricted Indian, who has a guardian. Do the records of the court out there show all adjudged really incompetent, so that there would be no distinction in the records of the county court?

Mr. WILSON. I think in many cases that would be so, and, perhaps, to meet your suggestion, the language "non compos mentis" or "insane" would cover the point you have in mind.

Mr. HASTINGS. Say the court adjudged him non compos mentis in all cases where a guardian is appointed for a restricted Indian.

Mr. WILSON. I do not think so. I can only think, perhaps, of one case where such an adjudication has been made.

Mr. HOWARD of Oklahoma. There are cases, many of them, from what I can understand from this hearing, where noncompetent not

incompetent Indians, have been taken into county courts in Oklahoma and placed under guardianships.

Mr. WILSON. Yes, sir.

Mr. HOWARD of Oklahoma. Do you know whether or not any record is kept by that court of the proceedings that declare a guardianship for this noncompetent Indian?

Mr. WILSON. Yes, sir.

Mr. HOWARD of Oklahoma. Mr. Chairman, I think it might be enlightening if we could have the record of some cases where non-competents were taken in, and have that data put in this record.

The CHAIRMAN. We expect to have here in the next few days some guardians.

Mr. HOWARD of Oklahoma. That is only a guardianship. When a noncompetent wants a guardian and goes into court, I want to see whether that court has complied with the Oklahoma laws as to how an incompetent Indian is handled. I would like to see the transcript of the case.

Mr. GARBER. Refreshing your recollection, the county court would only have jurisdiction to appoint a guardian on proof of incompetency, which might be insanity—non compos mentis—or it might be proof showing his inability to manage the affairs of his business. Is that correct?

Mr. WILSON. Yes, and that is usually the proof, I take it.

Mr. GARBER. Is not the jurisdiction of the court limited to that statute alone in the appointment of the guardian?

Mr. WILSON. Yes, sir, it is; no other statute.

Mr. ROACH. There may be several different reasons which the statute might assign. After the appointment is actually made, is not the conduct of the court of necessity the same toward an insane ward as it would be toward one simply unrestricted?

Mr. WILSON. So far as finances are concerned.

Mr. ROACH. Can any greater benefit be given one ward than to another?

Mr. WILSON. There is no distinction as far as the practice is concerned.

Mr. GARBER. The court might appoint a guardian of the person in the case of one who is non compos mentis, as well as of the property, but the ordinary practice there is to appoint a guardian of the property of the ward, is it not?

Mr. WILSON. I think the majority of the letters and orders of guardianship read "of the person and estate." You will find that in some cases more careful practitioners have stricken out the words "of the person" and made it "estate," but the majority, more prudent, cover both.

Mr. HOWARD of Oklahoma. It has been brought out here that it is easy to get a guardian, and I want to know whether it is or not. I do not think any judge is violating the law.

Mr. WOODWARD. The records here will show.

Mr. GARBER. On the records of the court will only appear a journal entry wherein the court finds Jones was incompetent to handle his business and guardian appointed. It would not give the committee the facts of evidence.

Mr. WOODWARD. I think in most of the cases, if not all of them, the reporter takes down the testimony.

Mr. HASTINGS. But it is seldom transcribed unless there is a contest.

Mr. WOODWARD. Unless specially requested it is not transcribed. The petitions in most of these cases show language like this, "that such and such an Indian is a restricted Indian who has not received a certificate of competency and his estate is valued at so much," and, sometimes, "that he is addicted to the use of intoxicating liquors and is liable to be imposed upon by artful and designing persons," following the language of the statute which you referred to—

Mr. WILSON. Mr. Woodward, you made the statement that there are approximately 75 appeals in the district court from orders made by the county court. That was in connection with questions asked by members of the committee and with reference to whether any appeals had been taken or demands made by the Department for removal of the guardians. Do I understand you to mean by that there are 75, or approximately 75, appeals pending in the district court from orders of the county court refusing to remove guardians?

Mr. WOODWARD. Not at all. I did not intend to give that impression, but let me say again that what I am trying to bring out now and at that time was to enforce the point that the suggestions or desires of the Government through the superintendent of the Osage Agency are not necessarily followed, do not necessarily have any effect at all upon the Probate Court in all matters generally affecting guardianships. I did not mean that there were 75 appeals from appointments of guardians. I hope that was not so understood.

Mr. ROACH. I understand under the provisions you have just read of the act of 1912 that it is not only the privilege but, perhaps, the duty of the Indian Office to review the settlements made by guardians for their wards.

Mr. WOODWARD. Yes, sir.

Mr. ROACH. And file any objection thereto that they may desire to make to the court. The question I wanted to ask is what the attitude of the court in Oklahoma has been toward the agency under the operation of that law, whether the relations have been cordial and pleasant or whether there has been any feeling or tendency to discourage the Indian agency from going into court or not, and making these objections that they had a right to make. In other words, has the Indian Agency had cordial cooperation of the courts in reviewing those amounts and arriving at what be just treatment of the wards or not?

Mr. WOODWARD. Up until the passage of the act of 1921 the relations between the agency and the county courts have been cordial, and, I think it would be correct to state, that in practically all cases they worked in harmony, but after the passage of the act of 1921 those relations have not been so harmonious. The then county judge took considerable personal offense at the presumption of Congress in passing a law which he thought was meant in some respects to curtail his jurisdiction, and his feelings with regard to that act were very strongly reflected in his treatment of Agency representatives as long as he continued in office. That was Judge Sturgell who appeared before this committee last year or the year before. He is not at this time judge of the probate court, Judge Justus having taken that position last spring, and I might say, in order to more fully answer that question, that I understand the relations existing between

the present probate attorney, Mr. Humphreys, and Judge Justus are very friendly.

Mr. LEAHY. May I supplement Mr. Woodward's statement concerning the status of these people?

The CHAIRMAN. Certainly.

Mr. LEAHY. It seems to me from the questions which have been asked here and statements made by some members of the committee, a wrong impression exists as to the status of the Indian who has a certificate of competency. Under the law the fact of giving an Indian a certificate of competency, an Osage Indian does not change his status at all as an Indian, does not change his relationship to the Government or the authority and jurisdiction of the Government over him at all. It affects only the releasing of certain property rights from control of the Government. To make that clear, under the allotment bill certificates of competency were granted to those whom the Secretary found were competent and capable of handling their own affairs, which gave to them the right only of selling or otherwise disposing of their surplus lands. Now, the Supreme Court of Oklahoma in a case involving the interpretation—

The CHAIRMAN (interposing). Was not that the case at that time that that was all the property they had?

Mr. LEAHY. No; they had all this mineral right.

The CHAIRMAN. You are speaking of 1906 now.

Mr. LEAHY. The law of 1906 reserved the mineral rights for the entire tribe.

The CHAIRMAN. There was very little mineral developed there then.

Mr. LEAHY. It was considerable, of considerable importance.

Mr. MORROW. When you speak of "surplus lands," you mean other than homestead lands?

Mr. LEAHY. Yes; the Supreme Court of Oklahoma in interpreting that statute held that the only effect of the certificate of competency granted to an Osage Indian was that he might encumber, sell, or dispose in any way of his surplus lands, but it also went on to say that his surplus lands were not by reason of certificate of competency made subject to debts or loans except those which he voluntarily placed upon the land himself. That was the contention up to 1921. Under the act of 1921 it was further provided that those who had certificates of competency should have this income quarterly paid out to them, while those who were without certificate of competency were restricted to \$1,000.

The CHAIRMAN. Was it not a fact that previous to March 3, 1921, that which accrued to the allotted Osage Indian was paid to them without restriction?

Mr. LEAHY. Yes, sir; that applied to all the Indians alike—those with certificates and those without. I am simply pointing out that a further distinction was made by the act of 1921 for the purpose of emphasizing to the committee that the status of the Indian is not changed by reason of giving him a certificate of competency. The Government still maintains and exercises the same control over the interest of the Indian in the mineral property. He is still an Indian, and the Government relation to him is not severed by reason of granting a certificate of competency, but he is only accorded the right of handling these properties.

The CHAIRMAN. Without restrictions?

Mr. LEAHY. Without restrictions.

The CHAIRMAN. What greater liberty can a man have who has the control of the expenditure of all of his funds?

Mr. LEAHY. The point that I am trying to get to the committee is that the Government not only has control of the Indian's property but it has direct supervision over the Indian himself, and pointing out that the Indian has not been released by granting a certificate of competency.

Mr. SPROUL. Just what does that power or supervision consist of which you say the Government yet has over these Indians declared to be competent and having the free use of their property? What powers does the Government have over them which they exercise over him and his property, if it still exists?

Mr. LEAHY. To illustrate that, take these Indians who have been granted certificate of competency.

Mr. SPROUL. Take Mr. Jim Rivelet, what power has the Government over him?

Mr. LEAHY. The Government has power over him as long as he is a member of the Indian tribe.

Mr. SPROUL. Just what power?

Mr. LEAHY. To handle his affairs in so far as they are connected with the tribe.

The CHAIRMAN. The Government has the right to gather this man's money together for him that comes in under the tribal relation, that is impounded, and they turn it over to him to do what he pleases with it. As I see it, the only power that the Government has over that Indian is to operate jointly for all the Indians of the tribe his interests in the tribal lands or minerals.

Mr. SPROUL. And pay it out to him as it accumulates.

Mr. LEAHY. But he still retains his status as an Indian. The Supreme Court of the United States has held repeatedly that granting of citizenship to an Indian does not destroy the status of an Indian or supervisory control.

The CHAIRMAN. Assuming that is all true, where does he come into this proposition?

Mr. LEAHY. You have got the full-blood Indian. Your interest is with them more than with the very small degree of Indian blood. A good many of these Indians have certificates of competency and it has been demonstrated here that it was inadvisable and improvident to grant those Indians certificates of competency. You have the right to withdraw that certificate and put the Indian exactly where he was before. That is a point I make that is important in this bill.

Mr. WILSON. May I ask you if this is not true, that where a full-blood Indian has been granted a certificate of competency by the Interior Department, if he is declared incompetent to manage his affairs under the laws of the State of Oklahoma and a guardian is appointed over his affairs, if the authority of the department over him is not sufficient to permit the Secretary of the Interior or his representative, the Osage Agency, to appear in the county court with reference to any guardianship or administration matter and protect his rights in these matters to the same extent that he has to appear and protect the rights of the restricted Indian? Is that true?

MR. LEAHY. Absolutely, in the 1912 law, but there is this proposition behind all of that. This property gets into the hands of a guardian. The superintendent has the right to appear in all matters. It is made his duty by the law of 1912 to appear in all matters affecting the Indian in the county court, but when the guardian is once appointed for the Indian, under the laws of Oklahoma, the court may find that he is incompetent to handle his business affairs, or is an habitual drunkard or non compos mentis, but where that guardian has been appointed and an Indian is not non compos mentis, there is not any reason why the guardian should not be removed. The accumulated funds of the Indian go to the winds, and that case he is not protected at all by this law.

MR. HOWARD of Oklahoma. That is one important point that is going to be protected in this legislation.

MR. LEAHY. I will say further, that under the 1912 law, Congress imposed a trust in the county court of Osage County. It released some of its jurisdiction to those courts for the purpose of permitting the court to exercise jurisdiction. That went on until 1921 when Congress, by that act, said that these restricted Indians should only have \$4,000 a year for their use and benefit, but did not change the law with reference to guardianships that existed. Immediately, and as has been testified here, guardians were appointed for Indians who, theretofore, had not needed a guardian because they had received all of their funds and that money was being permitted to go into trade, and after that law was passed the court, in my judgment, so far forgot its duty and responsibility and trust that the Government imposed upon it by reason of the Government giving it the right to handle these guardianships, that it entered into a combination for the purpose of permitting guardians to be appointed for people whom the Government was trying to protect and control, contrary to the wishes of the Government and to the terms of the act of 1921.

MR. WILSON. I may say in response to that that it has been commonly reported in Osage County that the first firm of lawyers who advertised to the Indians that that condition existed whereby they could have guardianships appointed emanated from the firm of Leahy & McDonald.

MR. LEAHY. That is not true.

MR. WILSON. I do not know whether it is true, but it is common report, and that soon after that fact became known, numerous applications were made for the appointment of guardians, 91 in a short time. It is reported, so reported, I understand by the Indians themselves who have been notified. I am not able to prove that, but it is a matter of common report and it is, also, by a matter of record knowledge that that firm has, if not a majority, approximately half of these guardianships.

THE CHAIRMAN. I asked you a question before we got into this discussion which I do not want you to forget. That is with reference to this proposition of establishing somewhere in the West, a big plantation with the money to be provided from the Osage funds to an extent of about \$3,000,000, and I asked you to tell us about it.

MR. WILSON. That report has been in common circulation in Pawhuska, Osage County, for the past three weeks and the report is this: That some months ago this 350,000 acre tract of land was placed in

the hands of a certain real estate agent in Pawhuska for sale at a price less than \$2,500,000; that soon after that, certain citizens of Pawhuska visited the manager or superintendent of that ranch and among those visitors was the attorney for the Osage tribe of Indians, Mr. Woodward; that while they were there, (and I get this from the agent himself,) word was sent to him that the sale of that property was withdrawn from his hands in so far as contracts could be made with any Indians and that immediately after that certain other parties were given the right to make contracts with the Indians for the sale of this particular tract of land for the consideration of \$3,000,000.

Mr. ROACH. Under existing law could the funds of Osage Indians be invested in such an investment? I am not certain about the character of the investment, it may be good or wildcat.

Mr. WILSON. No.

Mr. ROACH. But what I wanted to know is whether or not, under existing law, funds of the Osage Indians could be invested in a ranch in New Mexico or property in New Mexico or any other country?

Mr. WILSON. No, sir; but under the proposed Snyder Act it can and is.

Mr. ROACH. Under the act any funds are required to be invested in what?

Mr. WILSON. Not Osage tribal funds, but this condition would be brought about.

Mr. ROACH. I am speaking about the principal. Here is an income that gets into the hands of the guardian. I presume the law regulates the investment of that in the State of Oklahoma, what securities may be invested in, loans upon real estate, or invested in bonds and securities. It is income I am speaking of. The principal is required under law to be invested in certain securities.

Mr. HASTINGS. Or placed in banks.

Mr. ROACH. They could not buy a ranch with it. That is apparent.

The CHAIRMAN. Under this proposed bill it would give the right to invest the money in first mortgages on other property. That is what he has in mind.

Mr. HASTINGS. Let me see if I am clear. I did not hear of the proposed purchase of this tract of land. But was it not admitted that it would be bought with individual funds?

Mr. WILSON. It is the only way under the Snyder bill it can be bought, with individual funds.

Mr. HASTINGS. Can it be bought now with individual funds, not tribal funds? After the individual funds have been turned over to guardians, could not this deal be consummated by getting the individual Indians to buy?

Mr. WILSON. Not by the guardians.

Mr. ROACH. I should not think so. I should think the laws of the State of Oklahoma would limit the investment of the funds of guardians to some safe investment.

The CHAIRMAN. This act says within "Osage County." "first mortgages within Osage county."

Mr. HOWARD of Oklahoma. The Snyder bill provides, page 3, lines 6 to 13; that

The Secretary of the Interior shall invest the remainder, after paying all of the taxes of those members whose funds are subject to his supervision, either

severally or jointly, in such manner as to him shall be deemed to be for the best interests of such members, in such a way and under such restrictions, rules, and regulations as he prescribe, or place the same on time deposit in banks in Oklahoma, for the benefit of such members.

Mr. WILSON. That is the provision.

Mr. ROACH. What limitation does existing laws place upon the investment of funds referred to in that section of the bill?

Mr. HOWARD of Oklahoma. The act of 1921.

Mr. ROACH. Read what you read there again. Do they propose to leave it to the Secretary of the Interior to make investments?

Mr. HOWARD of Oklahoma. Severally or jointly.

Mr. ROACH. The existing law limits the power to make investments.

Mr. HASTINGS. Not after it is turned over to the guardian. It does as long as the money is held by the superintendent, but suppose the money is turned over to the guardian, then the act of 1921 directs how it should be invested.

The CHAIRMAN. The act of 1921 says:

And to invest the remainder, after paying all taxes of such members, either in United States bonds or in Oklahoma State, county or school bonds or place the same on time deposit at interest in the banks of the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe.

Mr. HASTINGS. That amount not turned over to them.

Mr. GARBER. Why is not that a good provision?

The CHAIRMAN. It is. The proposition is to widen it. At least, the argument made to me for this new language was that more money could be made for the Indian if they were permitted to buy first mortgages. It may be that I did not read it carefully enough. I thought it referred only to first mortgages in Osage County, not giving the right to distribute the money all over the United States where they pleased.

Mr. HASTINGS. This other new question has been injected. I want to be clear about that. Let me ask Judge Wilson, did the proposition involve the investment of Osage tribal funds in the purchase of this land, or was it intended that they would get a number of Osages together and who had funds to their credit, combine and to invest the individual funds in this tract of land?

Mr. WILSON. It is the only way it could be done.

Mr. HASTINGS. To combine as individuals?

Mr. WILSON. Yes, sir.

Mr. HASTINGS. The proposition, I think, was made to the superintendent of the Osage Agency that he could take the tribal funds to buy.

Mr. WILSON. I have never heard of such a proposition and I did not mean to imply it.

The CHAIRMAN. The proposition is that invisible suggestion here, that this language in the proposed act would permit this thing to be done.

Mr. HOWARD of Oklahoma. I do not think it would permit it, but each individual could signify his intention to do so.

Mr. HASTINGS. What I gathered from the statement of Judge Wilson is that this attempt was before the introduction of this bill.

The CHAIRMAN. It was attempted to be done but they found it could not be done without a change in the law and that is why they are here asking for this language now.

Mr. MORROW. What is the condition of the lands of these particular Indians now? Have they lands enough upon which the rising generation can spread out or do they need additional lands for the future in their own State?

Mr. WILSON. Answering that question I may say that very few Indians reside upon their lands. Each allotted Indian was allotted approximately 640 acres, or 657½ acres. Many of them have sold that. They do not reside on the farms. They do not cultivate the farms. They move to town.

Mr. HASTINGS. About what per cent reside on the farms?

Mr. WILSON. I can not give you a very accurate estimate. I do not suppose one in one hundred.

Mr. HASTINGS. Neary all live in town?

Mr. WOODWARD. I think the estimate is a little low.

The CHAIRMAN. You think 1 in 200?

Mr. WOODWARD. I think more than 1 in 100 live on farms.

Mr. HASTINGS. I will make this statement and ask you if it is correct. Under the original allotment act, when the rolls were made, there were 2,229 Osages enrolled. They were given four selections. For instance, they took a first selection of 160 acres. They are given another selection of 160 acres. After they made that selection and the selection of 160 acres and finally an additional selection, they got altogether 657½ acres, so that each allottee received 657½ acres; I mean the 2,229 originally enrolled members of the tribe. The first selection or one of the selections was described as a homestead, that is, 160 acres. The other selections were described as surplus allotments. Is that correct?

Mr. WRIGHT. Yes, sir.

Mr. HASTINGS. Those who were born into the tribe subsequent to the closing of the rolls, July 1, 1907, of course, received no allotment and no lands except such as they may have inherited from deceased members of the tribe. Is that right?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Have you given us all the information with regard to this proposed purchase which you think the committee is entitled to at this time? Give us your real belief.

Mr. WOODWARD. Finish the statement.

Mr. WILSON. I have no personal knowledge of what this alleged plan is except that which I hear commonly reported and which, from talk with certain people I believe is, at least, being considered. Whether there is any well defined plan or not I do not know. The only way that I can see how that can be done under the proposed Snyder bill or this bill, which Mr. Snyder as chairman of the committee has introduced, is this, that a large number of Indians could be induced to enter into a contract with the approval of the department whereby certain of their funds, which are held by the department, could be contributed in such a way that a sufficient amount could be gotten together and that a certain person represented as a trustee, could take all those funds in the aggregate and make the purchase and hold the title to this land as trustee or in some other capacity.

Mr. ROACH. You will have to change existing law before that could be done.

Mr. WILSON. You will have to change existing law, but it could be done under the provisions of the bill which has been offered and the bill which we are objecting to.

Mr. HUDSON. Is the witness willing to specify a little more closely? Do you mean such funds as would remain from annual distribution?

Mr. WILSON. Yes, sir; it could be such funds as are paid out to Indians; except, in practical experience, we know that the ordinary Indian, whether restricted or unrestricted, whether with certificate of competency or not—

Mr. ROACH. (interposing). Have you any information that leads you to believe that the department might be contemplating such a procedure as you have indicated?

The CHAIRMAN. He has made the suggestion that the attorney for the Osages visited this property.

Mr. ROACH. I was just interested to know the amount.

Mr. WILSON. I do not know how the department is interested in it; or I do not know whether the department would or would not permit that to be done, but we in Oklahoma are concerned largely not by the operation of this law as it ought to operate, but by the operation of every law as it is done.

You complain that guardianship funds are misappropriated and misused, but if they are, they are misappropriated and misused in violation of the laws of the State of Oklahoma. One thing I will impress upon this committee is that the Indian has far more protection and is fenced about by greater protection than is the citizen of Oklahoma who is not an Indian. If I should die and leave children who would be put under guardianship in Osage County, the young Indian under guardianship has greater protection than my children would have in this, that my children would be protected by the action of their guardian or by the attorney whom that guardian might employ to advise, and that is all the protection my child would have with reference to the handling of its guardianship funds.

Mr. GARBER. Your children would have the protection of the conscience to a much greater extent of a member of the bar.

Mr. WILSON. There may be crooked lawyers who would rob the Indian, and history shows that there are a few crooked lawyers who robbed the white child.

Mr. GARBER. The inquiry is not aimed to crookedness. You must not get a wrong impression. We admit at the outset, at least my knowledge convinces me, that the laws of Oklahoma are just as good as any other State and the members of the bar of Pawhuska and Osage County are just as reputable and of as good standing as members of the bar in any other county of the State.

Mr. WILSON. I think so.

Mr. HOWARD of Oklahoma. Or in any other State.

Mr. GARBER. Yes, or in any other State. Our inquiry was aimed at the practice and the burden of administration by guardianships and the general practice of not giving the degree of personal attention and conscientious consideration in keeping down the expenses of the Indian who is not receiving so much money and is so ill ad-

vised or so incompetent to be unable to handle his affairs in a business way.

Mr. WILSON. Those of us who are representing our side of this proposition before this committee and before Congress, are seriously handicapped by common report that there is a great degree of fraud or mismanagement of estates in Oklahoma. What that condition is in other parts of the State I do not know, but I say it does not exist in Osage County.

The CHAIRMAN. Does not that come about largely by the fact, that there are not in other parts of Oklahoma to the same degree guardians appointed? Here we have a case in a small territory of 435 wards under 200 guardians, approximately, all appearing in the same court.

Mr. WILSON. Yes, sir.

The CHAIRMAN. The whole matter is intensified there. Possibly the majority of the cases are handled all right but there is always where there is so much business as that here and there a case of fraud.

Mr. WILSON. That may be.

The CHAIRMAN. And over expenditures, bad management, poor judgment, and those things are intensified here.

Mr. WILSON. That may be true.

The CHAIRMAN. We have had 25 cases put in the record, and in the main, you can not get away from the fact that it is shown clearly that incompetent Indians, having guardians, are paying on the average \$1,000 a year for supervision that it does not cost them under the supervision of the Government.

Mr. WILSON. Judge Humphreys is here and that idea, I think, prevails in the minds of the members of this Committee, and I want to make the statement that there is no such an average.

The CHAIRMAN. That is the average on those who went into the record.

Mr. WILSON. It may be. I probably will be able to show the committee numerous other cases.

The CHAIRMAN. It seems to me it is pretty nearly apropos to get some of that definite information in the record without having so much of this general talk. As far as I have yet seen, you have not placed anything in the record of a definite character or a definite nature with regard to the handling of guardians out there which would point out to the committee, in writing or of record, that there was anything different from what we have in the record except a general statement.

Mr. WILSON. You have viewed about one-twentieth of the cases. Those cases seem to be cases wherein the amounts involved in guardianships are large. There is the case of Mary Elkins there, which is the largest guardianship in Osage County. Mary Elkins has either eight or eight and one-half estates.

Mr. WOODWARD. Eight and a quarter.

Mr. WILSON. The amount that Mary Elkins last year through her guardian drew from the Treasury of the United States as an Osage Indian is eight and a quarter times \$11,800. There is a confusion between the fiscal and calendar year, and we generally, in considering these things, use the calendar year.

Mr. WOODWARD. For the calendar year, \$11,800.

The CHAIRMAN. I suggest to the witness that it strikes me it would be good business for you to put in 25 opposite cases to those already in the record to show where they have been handled somewhere within the amount fixed by Congress for a proper compensation.

Mr. WILSON. We would like to call the committee's attention to the fact that there are more cases than 25; and we expect to do so. Not only that, but upon the request of your committee there will be furnished, not right now, abstracts of practically every guardianship of an Indian in Osage County. We might not be able to get them all.

Mr. HUDSON. Following out what you started on, you were trying to say to us that in this one case the amount involved was so large that \$1,000 was not excessive.

The CHAIRMAN. In that case it ran into more than \$1,000.

Mr. WILSON. I would suggest that the estate is probably worth \$1,000,000. Taking into consideration the value of the headrights, that Indian has to participate in the distribution of eight and one-quarter headrights of Osage Indians, I understand, and I will stand corrected if I am mistaken, that it is more, and she has practically two or three hundred thousand dollars in the hands of the administrator in cash and securities.

Mr. HUDSON. I do not want to break into any testimony you are putting in, but what I wanted to get at is that you say that the provisions of the bill before the committee, the Snyder bill, would permit the Commissioner of Indian Affairs or the agency to take these sums allotted and combine them and purchase this land, and do in that way what the guardian can not do, if they get together.

Mr. WILSON. The guardian can do it, but there is not so much probability.

Mr. HUDSON. They could do it?

Mr. WILSON. Possibly, true.

Mr. MORROW. Under this provision, in the Snyder bill, does it not place the investment absolutely under the control of the Secretary of the Interior?

Mr. WILSON. I think so.

Mr. MORROW. And the sale and supervision of it in the future. But we are concerned seriously not with the territory of the law but with the practical operation of all laws governing the Osage Tribe of Indians and their funds.

Mr. HUDSON. Is it your theory that you are opposed to any of the moneys that these Indians receive being invested in real estate outside of your county?

Mr. WILSON. No, sir.

Mr. HUDSON. Or your real estate?

Mr. WILSON. No, sir; we feel as much as possible of it should be invested in real estate in Osage County and other securities.

Mr. HUDSON. Why?

Mr. WILSON. Because we feel that being citizens of Osage County we have the right to those benefits which come from the natural resources of the county, honestly and fairly, to the same extent that every other citizen of any other community has the right to benefit generally from those advantages which comes from the natural or other resources of that community.

Mr. HUDSON. You would not want to restrain your investment necessarily to this county?

Mr. WILSON. No, sir; that is not true.

Mr. HASTINGS. It enhances the value of Osage property as well.

Mr. WILSON. Yes; and would contribute to the prosperity of everybody in the county, and we want that done. We want a condition brought about which, in its practical operation, will result in the funds which are derived from the natural resources of Osage County being expended and used in Osage County; not only that, but the guardian lets this money out, a great deal of it, if he was permitted to do so there. But the guardian who does it now does it over the protest of the Indian Agency and if permitted to do so, the guardians would let this money out in gilt-edge real-estate securities in Osage County and adjoining communities and get a larger rate of interest thereunder.

Mr. HUDSON. The benefits accruing from such investment would be to whose benefit?

Mr. WILSON. I understand the benefit would go to the Indian himself, the ward.

Mr. HUDSON. Why?

Mr. WILSON. Because he can get a greater percentage of interest on real estate than in banks at 4 per cent.

Mr. HUDSON. A greater per cent on real estate lying within the county?

Mr. WILSON. Yes, sir; or in neighboring communities. If the guardian, having a large amount of funds in his hands under the bill, and the ward wants to make a real-estate loan in Osage County or any part of the State, he must do so under the vehement protest on the part of the agency. They say it can not be done. I say it can. I say there is nothing in the provision of the law of 1921 which prevents him from doing it. That is my opinion, but the department says that is not true and that the guardian has no right to make that kind of investment, but I am frank to say that we are trying as best we may to conform to the wishes of the department, but sometimes we disagree.

Mr. HOWARD of Oklahoma. Would not an investment in Osage County, in Oklahoma, enhance the property of an Indian in Osage County?

Mr. WILSON. It would do so.

The CHAIRMAN. That same thing applies to all property in Oklahoma bought from funds, or deposits of money in the State of Oklahoma, or elsewhere.

Mr. HASTINGS. Several years ago we found a lot of this money deposited in Iowa, Nebraska, and Texas banks, and we organized and appealed to the department, but could not get the department to favorably act upon it and the Oklahoma delegation went before Congress and got this provision enacted.

The CHAIRMAN. Because they deposit it in their own banks. Last year I will say that there was so much money out in Oklahoma belonging to the Indians, that the banks could not take it and we had to put six or seven million dollars of it in United States Government bonds, and, I think, it could be distributed in other States, as well.

Mr. HASTINGS. That is an absolutely safe investment.

Mr. HUDSON. I do not want seemingly to have a prejudice in my mind, but it looks to me as a new member of the committee and of Congress that the witness thinks that none of the money of the Osages should be used in surrounding States for deposit.

Mr. HOWARD of Oklahoma. I will say to the gentleman that there is not only this involved in this matter, but the fact is that the citizens of Osage County pay their taxes to keep up schools which the Osages go to.

Mr. HUDSON. It was testified that they pay taxes.

Mr. HOWARD of Oklahoma. On part of their lands but their homestead are all nontaxable.

Mr. HUDSON. Does not the Government give you money in addition to that?

Mr. HOWARD of Oklahoma. No, sir; it does not.

Mr. GARBER. By reason of the nontaxable lands in Oklahoma the citizens of Oklahoma are required to pay additional taxes, are they not?

Mr. HOWARD of Oklahoma. Yes, sir.

Mr. GARBER. And bear the burden of the 33 Indian tribes in Oklahoma?

Mr. HOWARD of Oklahoma. Yes, sir: in driving out to the oil wells in Osage, the citizens of Oklahoma are keeping up the roads that open the oil fields in Osage County to thousands of workmen. Last year the legislature appropriated \$650,000 and now they have a bill for \$728,000. Oklahoma is interested, not from that standpoint only, but also from the standpoint of all this money being invested in property in Oklahoma that is nontaxable and which does not help pay the expenses of what we have to pay as individuals to keep this up.

Mr. HUDSON. If invested in Government bonds?

Mr. HOWARD of Oklahoma. No, sir: that is in private banks, and this bill extends and broadens the scope for investing this money, so that it can put into taxable securities in Oklahoma.

Mr. SPROUL. What per cent of Osage County is composed of the Osage reservation?

Mr. HOWARD of Oklahoma. It is the old reservation.

Mr. HASTINGS. It is the reservation itself.

Mr. HOWARD of Oklahoma. These nontaxable lands are scattered.

Mr. WOODWARD. Before you adjourn I will answer some questions. First, that insinuation in regard to taxes on the Osage Indians. I have repeatedly called the attention of this committee to the fact that the Osage Indians are taxpayers. The Congressman from Oklahoma will permit me to enlarge a little on the statement he made, with regard to the lands of these Indians being nontaxable. The homesteads originally comprised only one-fourth of their allotments and, since the time of their allotments, many of the Indians who have received certificates of competency and are less than halfblood, have sold their homesteads; many have died, and in both those cases the homesteads have become taxable, so there is only a small fraction of existing homesteads which are now nontaxable in Osage County.

Mr. HASTINGS. Those are held by the original allottee.

Mr. HOWARD of Oklahoma. There are lands in Osage to-day that are not taxable and that is all I said.

Mr. WOODWARD. A small fraction.

Mr. HOWARD of Oklahoma. What proportion?

Mr. WOODWARD. Less than one-fourth. Considerably less than one-fourth.

Mr. HOWARD of Oklahoma. That is one-fourth of all the homesteads.

Mr. WOODWARD. The original allotment of 1,500,000 acres.

Mr. HOWARD of Oklahoma. Does the Osage Indian pay an income tax to the State of Oklahoma?

Mr. WOODWARD. Answering that, the Supreme Court in 1922 held that part of the income was nontaxable.

Mr. HOWARD of Oklahoma. That bears out the point in regard to taxes.

Mr. WOODWARD. He pays a Federal income tax. Judge Wilson says that 99 out of 100 Indians in Osage County live in town and they will have to pay a tax on all their city property, and on all of their personal property. That tax is 5.73 on each \$100.

Mr. HOWARD of Oklahoma. That is for local purposes, paving, sewers, etc.

Mr. ROACH. Why does not the Indian pay a State income tax?

Mr. WOODWARD. Because it is a Federal agency from which he draws his income. Some reference was made to the road tax. Just to refresh your memory, the act of 1921 provides that the Osage Indians shall pay to the State of Oklahoma a gross production tax of 3 per cent, the only tribe in Oklahoma that pays it, the same as every white man who has royalty interests pays, and in addition to that the Osages pay to Osage County for maintenance of roads and bridges 1 per cent, which no white man nor no other Indian pays.

The CHAIRMAN. How much does that turn in?

Mr. WOODWARD. \$137,000 to Osage County last year, and there is a delegation of Osage County people up here now to try to prevent the repeal of that 1 per cent tax, which is such a big item in their receipts. Let us get it fairly stated before the committee so that there will be no misunderstanding, that the Osage Indians are big taxpayers.

Mr. HOWARD of Oklahoma. Nobody denied that, but I set out that there is nontaxable property in Osage County of these Indians and if there be but one section, the rest of the citizens who do pay taxes pay that much more.

Mr. WOODWARD. Those homesteads, under existing law, become taxable in 1931—in seven more years.

Mr. HASTINGS. Of the surplus lands is it three-fourths of the allotted lands or three-fourths of the \$1,500,000 acres that have always been taxable?

Mr. WOODWARD. Not quite one-fourth are homesteads; more than three-fourths surplus.

Mr. HASTINGS. Since when?

Mr. WOODWARD. Taxable since 1910.

Mr. HASTINGS. Give us an estimate, if you can, of how many of the 2,229 homesteads have been disposed of. I do not think you have the exact figures. Have half of the homesteads been sold?

Mr. WOODWARD. Six hundred Indians have died. Those have become taxable.

Mr. HASTINGS. That is over one-fourth.

Mr. WOODWARD. Between 800 and 900 certificates of competency have been issued.

Mr. HASTINGS. Are those allotments taxable?

Mr. WOODWARD. No; unless they have sold them.

Mr. HASTINGS. As long as they hold the original allotments they are nontaxable.

Mr. WOODWARD. Until 1931, and I would guess that, at least, one-third and maybe more of that class have been sold. I would think that anywhere between 800 and 1,000 homesteads are now on the taxable list.

Mr. HASTINGS. There are then 1,200 to 1,500 homesteads which are nontaxable?

Mr. WOODWARD. Yes, sir.

Mr. HASTINGS. Over half a million acres of land in Oklahoma are nontaxable.

The CHAIRMAN. I think that is cleared up.

Mr. WOODWARD. There is another proposition with regard to the cost of these guardianships. I will accept, for the moment, the figures introduced by the gentleman who appeared for the bar association. Two hundred and fifty dollars for the guardian and \$125 attorneys fee for each head right, with costs running from \$25 to \$50 a year, and with the cost of the bond, which has not been talked about very much. The minimum would be \$100 for the bond. You add those items together and multiply it by 436 and you have a cost of over \$227,000. I am not taking into consideration any extra fees, which in 99 out of 100 cases are allowed, or taking into consideration more than one head right, where that \$250 and \$125 would be correspondingly increased, and it would easily run the total cost up to \$300,000. I am not including deceased Indian estates which average \$1,000 in fees, and runs the cost up into another hundred thousands of dollars for the total, and \$400,000 is a low estimate. The cost of taking care of these guardianships and administrators is nearly three times the cost of the support of the Osage Agency in handling all of the business of the Osage tribe; bringing in a return of upward \$30,000,000 a year.

Mr. HOWARD of Oklahoma. Is it not necessary to wind up the estate of anybody who dies in Oklahoma, and these costs of deceased estates are customary?

Mr. WOODWARD. No, sir; not at these costs. The cost of administering affairs of the Osage Agency is less than one-half of 1 per cent. That is overhead; and if you deduct from that the interest received on funds invested during the year, it brings the actual cost to less than nothing.

Taking the figures, and I have given you the minimum, not counting any extra fees, the average cost in guardianship cases is over 7 per cent for last year on the \$3,000,000 received by the guardians. With all figures included, I believe it will run 12 to 14 per cent as the actual cost of handling guardianship cases.

Mr. HOWARD of Oklahoma. What is the average return to the Indians on these moneys invested now by the agency?

Mr. WOODWARD. Between four and five per cent.

Mr. HOWARD of Oklahoma. What is the average by guardianship?

Mr. WOODWARD. Seven per cent.

Mr. HOWARD of Oklahoma. You have \$17,000,000 at 2½ to 3 or 5 per cent on the \$17,000,000, brought to the Indian by that investment, and that would be 5 per cent to the Indians over the cost to them.

Mr. WOODWARD. Yes, if you do not figure the other side and deduct the costs of having guardians.

The CHAIRMAN. Where do you get the \$17,000,000 from?

Mr. HOWARD of Oklahoma. That is about what is available for guardianship moneys in the hands of the agency for investment for Indians a surplus of \$17,000,000 over the \$4,000 payments. The record shows that.

The CHAIRMAN. How much is in the hands of the agency at this time?

Mr. WOODWARD. Approximately \$15,000,000.

Mr. SPROUL. Is this money in the hands of guardians taxable under the laws of Oklahoma?

Mr. WOODWARD. The same as any other person's funds.

Mr. HOWARD of Oklahoma. According to the security it is invested in.

Mr. WOODWARD. As cash on hand it would be taxable. What Mr. Howard is trying to bring out is that money would bring a larger return in the guardians' hands than with the department. The difference between 4 per cent and 7 per cent, is practically eaten up with costs and fees, especially as all the funds in guardians' hands are not invested at all.

The CHAIRMAN. I will ask him to talk about his suggestions for expending this \$3,000,000.

Mr. HOWARD of Oklahoma. Do you mean to say that if we did away with guardians, that all of the money that is put in the hands of guardians, that is now in the hands of guardians, if turned back to the agency and the investments to be made by the agency in the future, that it will not cost any more in the expense of handling it to the agency than that?

Mr. WOODWARD. No, sir. I did not say that.

Mr. HOWARD of Oklahoma. Then how much do you estimate the additional cost would be to the agency to handle these matters?

Mr. WOODWARD. Possibly fifteen to twenty thousand dollars.

Mr. HOWARD of Oklahoma. I will call attention to the fact that the State of Oklahoma loans its money on school lands, makes proper investments, and it costs a great deal more money than that to handle them. My point is that when they talk about the cost of administration through guardians and the cost through the department, that in either case there must be extra expense, and now the proposition arises as to whether the guardians, through investments and the broadening of this bill, will earn the Indian more returns on his estate than will the Secretary of the Interior by investing them in their direction.

The CHAIRMAN. I think the gentleman has made a good point.

Mr. ROACH. In other words, if I get your observations correctly, a guardian under the State courts, authorized under the laws of Oklahoma, could invest the funds of his wards in loans and real estate at double the rate of interest, 7 to 8 per cent, and thereby bring into his ward's estate 7 per cent interest on the funds, whereas, under

the management of the same estate by the Indian agency, he perhaps only receives down to a minimum of 4 per cent.

Mr. HOWARD of Oklahoma. I saw one case yesterday where the guardian had invested all of his ward's funds in building and loan company stock, part of which was bringing 6 per cent, and another part 10 per cent interest; but the salable value of the building and loan stock at this time is worth 10 or 15 per cent more than the original investment.

Mr. ROACH. Testimony before this committee, so far, has indicated to my mind that, perhaps, the ward spends all of the money that the guardian has for him, anyway.

Mr. HOWARD of Oklahoma. That is only the \$4,000.

Mr. ROACH. You are speaking about the principal?

Mr. HOWARD of Oklahoma. The surplus.

The CHAIRMAN. Of course, Mr. Roach is right in his statement about that. Testimony shows clearly that these guardians do not confine themselves to expenditures of \$4,000 a year of the ward's income.

Mr. ROACH. They spend more than that.

Mr. HOWARD of Oklahoma. It has been shown that the only difference is that the Indians, under supervision of the agency, do contract debts against themselves, but that they can not be collected until after they are dead.

The CHAIRMAN. They are only collected after the guardian is appointed and people bring in claims.

Mr. HOWARD of Oklahoma. The debts may be collected when the Indian dies.

Mr. ROACH. This matter was under consideration by the committee last year, and as I remember, the committee went very fully into the question. I understand you have done so at this session. I have not had the pleasure of being here but to those who were not on the committee last year, I will say I was under the impression, from the testimony offered, and gained the opinion from the testimony offered, that the courts of Oklahoma in administering the estates of these Indians had kept well within the laws of the State of Oklahoma in doing it. That the fees provided for the attorneys of guardians were reasonable in amount, and that the commissions which the guardian received were reasonable commissions, and that there had not been any great abuses of the power given to the courts of Oklahoma in administering these estates; but, at the same time, I got the opinion that the expenses, while absolutely warranted by law and well within the provisions of the law, would be considerably less if handled by the Indian agency.

Mr. HOWARD of Oklahoma. That is just what I sought to bring out as to whether it would or not, taking into consideration these special guardians.

Mr. ROACH. In other words, we found the ward in the situation of having two guardians, one in Oklahoma, and one in Washington, D. C., and in the interests of the ward himself, it seemed to me that it was the duty of Congress, irrespective of what the local situation might be in Oklahoma, to save to the ward all the money we could, and for that reason I feel that a provision that places this matter in the hands of the Indian agency ought to have been enacted into law. But there was one matter that was left in some obscurity at the last

session, after the hearings, and is yet somewhat obscure. I understood it was intended to dismiss a few of these guardians but I never did quite understand how it was working out.

Mr. WOODWARD. With regard to a question asked Mr. Howard by Mr. Roach, there is nothing at all to prevent, if the proposed Snyder bill becomes a law, the department making the same investments and getting exactly the same returns for these Indians which are now obtained through the services of the guardians, and, as I hope I have shown you, with practically no additional expense.

Mr. ROACH. I am not sure of that.

Mr. HOWARD of Oklahoma. It has been going on? Has the Department in the past made that kind of investment?

Mr. WOODWARD. No, sir.

Mr. HOWARD of Oklahoma. It could not under the law.

Mr. WOODWARD. The department has endeavored to obey the law.

Mr. MORROW. Do you mean to say that they can go in and take the same securities that the guardian can, that is, real estate securities, by the Department?

Mr. WOODWARD. If this bill is passed, it provides for other investments.

Mr. MORROW. In their discretion?

Mr. WOODWARD. Yes.

Mr. ROACH. Here is a guardian in Oklahoma under bond and familiar with local conditions in Oklahoma, responsible to the court. Many States will permit a guardian to make local loans on securities approved by the State law, and he is answerable to the court under his bond. That proposition is reasonable. A guardian should be permitted to do the things Oklahoma permits him to do, but I doubt whether some person sitting in the Indian agency in Washington or elsewhere, would be able to judge of the classes of securities and invest the ward's funds as well as the guardian. I think that if that matter is to be left in the discretion of some one to make these investments, that the investments in which he can invest the funds of the Indian should be designated in the statute, and then there would not be any question about the investment being solvent and that the Indian funds were amply protected, because you would have, as I understand, the guardian, or the bond of the guardian to fall back upon.

Mr. WOODWARD. The wording of this law was made as broad as it is for the purpose of meeting the individual requirements of restricted Indians as brought to the attention of the department. If a man wants to build a house, buy farm implements, or buy an automobile, and it is sure there would be requested that kind, the department is authorized, under this law, to make the expenditure for him.

Mr. ROACH. I am speaking about investments from the funds.

Mr. WOODWARD. There was no particular form of investment in mind when that language was put into the bill.

Mr. GARBER. Is the machinery of the Interior Department sufficient to cover my colleague's suggestion there so as to give to the Indian the benefit of a personal consideration of his investments. Would it not require the special attention and study and care of an investment agent, for instance?

Mr. WOODWARD. That is why I answered Mr. Howard to the effect that it would take fifteen to twenty thousand dollars more to do the work now done by the guardians, if the department has to do it.

The CHAIRMAN. That would be shared by all the estates.

Mr. HOWARD of Oklahoma. There is a difference of opinion about that. It is my contention that to follow and properly invest all these moneys of the Indian to bring to him the greatest return through the Interior Department, that it would be necessary to build up a big organization in the Interior Department, such as we have in our school-land department, to handle these funds, and that the difference in cost would be some, but how much and in what way, is the question. That is the point I am trying to ascertain, whether the appointment of a guardian under the Oklahoma law, with a special attention to invest that money will bring the Indian greater returns than the Interior Department, unless the department builds up machinery to pay special attention to these investments.

The CHAIRMAN. Proceed, Mr. Woodward.

Mr. WOODWARD. Judge Wilson has made a statement here and left the committee to draw their own inference. I had hoped the judge would finish his statement and say what I think he wanted the committee to believe with reference to the purchase of a ranch in New Mexico.

The CHAIRMAN. I hope it is not near Three Rivers.

Mr. WOODWARD. I do not know where Three Rivers is. It was evident that Judge Wilson wanted you to think that as tribal attorney, my interest in this proposed legislation is the hope that the Osage Indians, somehow or other, will buy a ranch in New Mexico, but the judge did not say so in express terms. Some of you gentlemen may have received that impression, however, from what he did say.

Mr. HOWARD of Oklahoma. Is it not a fact that you went out there at the request of the Indians and as their attorney?

Mr. WOODWARD. Last spring an agent came to Pawhuska and interviewed a lot of Osages with regard to selling them the Bartlett ranch. During the summer, 100 of the Indians visited that ranch and after they returned—I think they were practically all full bloods—several of them came to see me at different times and told me what a magnificent place it was and what a fine time they had and how fine it would be for them to own it, and wanted me to go down. In December I did go down to this ranch, spent two or three or four days there, but up until this moment I do not know of any contract to purchase the ranch. I am sure there has not been any proposition made me or to the department at all or to any Osage except the advertising talk of agents endeavoring to get them interested in it so that they would want to buy it. I have no connection with any contract and do not know whether it would be possible for any number of the Indians under this law to buy it. That proposition had no connection with this law, and the inference that my interest in this law is connected with the purchase of this ranch is ridiculous on the face of it, because you men know in 1922 and in 1923, before the Bartlett ranch was heard of, so far as I know, I was just as vigorously trying to get this same law enacted. If we are going to have rumors and reports, you may as well get them from both sides. I have been told that the bar association, represented by these gen-

men, hope to throw a monkey-wrench into the machinery by making allegations about selfish personal interests in advocating the bill in order to confuse the members of the committee and muddy the water and do anything and everything possible to kill this bill because its main purpose is the supervision of guardianships. That is the meat of the bill. You can invest Osage money as you see fit, but when you do, we want some supervision of these guardianships. We do not want any confusion or side issues to come in between you and the main object that we want to attain.

Mr. HOWARD of Oklahoma. Are there not often cases of investments in Oklahoma where to allow Indians to invest jointly or severally investments could be made to their advantage?

Mr. WOODWARD. I do not doubt it. But the bar association has introduced a bill here and that bill limits the investments of these surplus funds to Osage County. Why? It simply carries out the fundamental idea that has grown up in Osage County that the Osages owe everybody down there a living. They do not want them to spend a dollar of this money outside of the county. Under their proposed bill an Indian like Jim Revelette if he did not have a certificate of competency Mr. Sproul could not buy a home outside of Osage County.

Mr. MORROW. Does not that go back further, to the time of Adam and Eve in the garden, the question of selfish interest?

Mr. WOODWARD. Probably.

Mr. HOWARD of Oklahoma. It has been stated or intimated to me that the agency would not even allow these Indians to buy homes in these towns in Oklahoma. What about that?

Mr. WOODWARD. It is true that the purchase of homes by full-blood Indians in some of the towns has been discouraged.

Mr. HOWARD of Oklahoma. Have there been any cases where they offered to sell homes to Indians and an investigation made showed a very large profit on these sales?

Mr. WOODWARD. All the investments in town property that I have had any personal knowledge of have been extremely high. It is a very rare case and I can not recall any at this time where an Indian has a bargain in city property. I know several cases where he has bought city property and can not get over 60 to 70 per cent or less of his investment.

Mr. HOWARD of Oklahoma. Is not that true all over the United States?

Mr. WOODWARD. I do not know. That covers too much territory.

Mr. HOWARD of Oklahoma. In Oklahoma have not real estate values decreased in the last year or two?

Mr. WOODWARD. Perhaps so.

Mr. ROACH. Under the State laws of Oklahoma, what investment can a guardian make of his ward's?

Mr. WOODWARD. Under the rules of the supreme court, governing guardianships, he is limited to first mortgages on real estate.

Mr. ROACH. He is not permitted to invest in municipal securities?

Mr. WOODWARD. No, sir; we do not much favor municipal securities.

Mr. ROACH. State or municipal securities?

Mr. WOODWARD. No, sir. Under the 1921 law you provide that the Secretary may invest in State, county or school bonds, but you do not include municipal bonds in that class of investments.

Mr. SPROUL. Are municipal bonds in Oklahoma attractive investments?

Mr. WOODWARD. My personal judgment is that some of them are not. They have not been in Osage County, some of them.

Mr. SPROUL. Are they nontaxable?

Mr. WOODWARD. I think so.

Mr. ROACH. Then the Legislature of Oklahoma has been exceedingly careful of the funds of wards, have they not, to say they should not invest money of wards in municipal securities, but limit it to first mortgages on real estate?

Mr. WOODWARD. That is not an act of legislature.

Mr. SPROUL. The question I intended to ask is whether, under the State law of Oklahoma, what investments can the guardian make of his ward's funds?

Mr. WOODWARD. I do not recall any statute. I will confess, that qualifies investments that the guardian can make, but the courts are governed by the rules of the supreme court, to which I referred, which limit investments to first real estate mortgage security. Perhaps other Oklahoma attorneys can refresh my recollection.

Mr. ROACH. Have they any statute in Oklahoma with reference to the investment of guardians' funds?

Mr. WILSON. I am not sure as to what the law is about that. I will ask Mr. Scott what the statute is.

Mr. SCOTT. I think Mr. Woodward has stated it as it is.

Mr. ROACH. My recollection is that it was stated before this committee at the previous hearings. I may be in error.

Mr. WOODWARD. I do not think there is any statute.

The CHAIRMAN. Mr. Wilson is a member of a firm who have several guardianships. Why would it not be pertinent here to ask him just what securities they invest the money in. I will ask that question.

Mr. WILSON. We try to follow the rule laid down by act of Congress.

The CHAIRMAN. I do not care about that general statement; just tell us what sort of securities you invest the money in.

Mr. WILSON. In bonds.

The CHAIRMAN. What kind of bonds?

Mr. WILSON. United States bonds, and some of it is invested in certificates of deposit, Federal certificates of deposit; some of it is invested in banks at interest.

The CHAIRMAN. Are those all of the places that you invest the money?

Mr. WILSON. Some of it is invested in real estate and homes for the Indians.

The CHAIRMAN. Any real estate mortgages or real estate itself?

Mr. WILSON. Some of it is, but since the law of 1921 I do not think any of it has been invested in real estate mortgages.

The CHAIRMAN. Are there other investments of the wards, or is that all?

Mr. WILSON. Some of the investments are in building and loan stock.

The CHAIRMAN. Do you think of any others?

Mr. WILSON. There are others, but I do not think of any just now in which our firm has investments.

The CHAIRMAN. Where have you put the majority or the largest per cent of those investments? The larger amount of moneys you have invested for the guardians is located in Government bonds and certificates of deposit, school bonds that pay a low rate of interest, or have you most of it invested in building loans and real estate bonds that pay a higher rate of interest?

Mr. WILSON. Most of it in building loans. Very little of it is in real estate, but, Mr. Snyder, I would like to make this statement, that I have recently reengaged in the practice of law and I am not familiar with the details of the business transactions of our office with reference to the handling of the guardianship matters. Most of these matters are handled by the other members of the firm.

The CHAIRMAN. Then you do not understand that the answers you have given are definite and conclusive?

Mr. WILSON. I am prepared to show definitely and conclusively by copies of records, some of which we will submit to this committee, just exactly what it is invested in, not only in our case, but practically every other case.

The CHAIRMAN. You just said a moment ago that most of it was invested in building and loan associations.

Mr. WILSON. I beg your pardon. I did not wish to be understood as saying most of it was in building and loan securities; some of it is.

The CHAIRMAN. What I am trying to find out is if you know where the larger per cent of this money is invested, whether invested in small interest-bearing securities or whether invested in higher interest bearing?

Mr. WILSON. It is probably divided equally, but I will state that we will have definite information. I have some of it which I would like to present to the committee, which will show exactly what they are invested in.

Mr. ROACH. I will make this observation. Personally, I think, it is very important that we should have information, first, as to what the average return on the Indian's estate is under existing law from the investments made by the Secretary of the Interior; second, what the average return might be if the investments were made by the guardian in Oklahoma. I will go further and make this observation, that in Missouri 6 or 7 per cent returns could be had upon these assets by loans made upon first mortgages of unquestionable real estate. I do not know what the laws are in Oklahoma, but in considering the expenses of handling these estates, as one member of the committee, there is no doubt in my mind that the estates can be handled much cheaper by the department, as shown by the evidence before the committee at the last session.

The CHAIRMAN. There is nothing in this record so far that would change your mind in that direction, in my judgment.

Mr. ROACH. I further understand from the testimony I have heard that the expense is less when handled by the department than the cost of administration. I do not know what the average return of these investments is at the present time, but I imagine not over $3\frac{1}{2}$ to 4 per cent on investments made by the Secretary of the Interior.

Mr. WILSON. In answering the question of the Congressman from Missouri, I will state that the act of Congress as interpreted by the superintendent of the Osage Indian Agency—

Mr. WRIGHT (interposing). Interpreted by the department. Not too much of this superintendent business.

Mr. WILSON. Possibly by the department. The law is interpreted to mean that money in the hands of the guardian since 1921 could not be invested in real estate security, but I disagree. I think it can be legally invested.

The CHAIRMAN. And your firm has invested money in real-estate security?

Mr. WILSON. I will state that we are trying to follow as nearly as possible the rule laid down by the Interior Department, and that since that time we are not investing in real estate security.

The CHAIRMAN. You have not invested in it that way since that time?

Mr. WILSON. Prior to that time, but since we have not.

The CHAIRMAN. You do not know definitely?

Mr. WILSON. The rule is that we do not advise our guardians not to do so, but it is the policy of our firm, as a firm, to advise the guardians to follow, as nearly as possible to do so, the rule laid down by the department, even though we disagree with the interpretation of the law by the department.

Mr. ROACH. I am trying to find out whether the people of Oklahoma are in position to secure a better rate of interest on these funds for the ward.

Mr. WILSON. Yes, sir.

Mr. ROACH. And an equally good class of securities?

Mr. WILSON. Yes, sir; we are. We could, if permitted by act of Congress and the interpretation of the act by the Interior Department, invest this money nicely in securities and real estate loans which bear approximately 7 per cent interest, and they are safe securities in Oklahoma, especially when supervised by a guardian who has all the knowledge of the facts and circumstances surrounding that security, and being on the ground can watch the conditions and take care of the security.

Mr. ROACH. And is under bond.

Mr. WILSON. And he is under bond.

Mr. ROACH. Do the bonds cover double the amount of the estate?

Mr. WILSON. Yes, sir, and in 19 out of 20 cases, it is a bonding company bond and not a personal bond.

The CHAIRMAN. With reference to investments made by guardians by advice of your law firm, has the average return been equal to 7 per cent on the investment?

Mr. WILSON. No, sir, it is not and can not be, as long as we follow the rule laid down. We try to get along with the department. We are not investing any money in real estate securities, because that is opposed to the department. If we ask leave of the court to do it, the agent of the department is there to object, and it has been the policy of the present county judge not to permit it, where the department objects. That is the reason we have to loan money for 4 and 4½ when we could loan on just as good security, real estate security not exceeding 50 per cent of its value, and get nearly twice that much, if we could be permitted to invest it in building and loan

association stock, which is safe security, and draws a much larger percentage of interest, but the guardianship can not do that.

Mr. ROACH. Do you not think your legislature could take up and consider the question of what are safe securities in making and prescribing a law?

Mr. WILSON. It may have been that it has done that, but, as I stated to this committee yesterday, when I was first introduced, I have not been in active practice of law for a long time. I have been out of practice 15 years and just went into practice actively within the last year, and there are a great many provisions of the statute with which I am not familiar unless they are provisions which are brought to my attention in the conduct of my court business. I do not think any question of that kind has ever come up. I do not recollect it, and if I were asked at home, I would have to turn to the statute to see what it is.

Mr. WOODWARD. In regard to investments, the average real estate investment in Osage County at the present time is 7 per cent.

Mr. WILSON. Yes, sir.

Mr. WOODWARD. Would the return to the Indian who has a legal guardian, from a real estate investment at 7 per cent, be less than 4 per cent net, because of the cost of the administration of his estate?

Mr. WILSON. There is no way to tell that because each case must rest on its own bottom.

Mr. ROACH. You gave an average that did not agree with my recollection. If we are going to figure averages we can figure them.

Mr. WILSON. I would like the committee to understand the situation down there the way we know it.

Mr. ROACH. My recollection is that the commission allowed the guardian handling the estate is 5 per cent.

Mr. WILSON. No commissions at all.

The CHAIRMAN. \$250 per head right, and \$125 counsel fee.

Mr. ROACH. They figure it 5 per cent of the average estate?

Mr. WILSON. No, sir; nothing like 5 per cent; I have not figured it on that basis.

Mr. ROACH. What does it figure?

The CHAIRMAN. I wish somebody would get on the stand and tell us what these guardianships amount to.

Mr. ROACH. I want to know what the average premium would be for handling an estate.

Mr. WILSON. We are going to produce the figures.

Mr. ROACH. In the final analysis, it would run from 8 to 12 or 14 per cent, according to Mr. Woodward.

Mr. HOWARD of Oklahoma. I saw a case of an estate yesterday worth \$27,500. If it drew 7 per cent that would be \$1,925 a year. That would be 3 per cent more than the average investment in Government bonds. It would draw \$725 more than if invested in United States Government bonds. Now, with \$250 for a guardian fee, and \$125 counselship, that is \$375, leaving to the Indian net \$850 more.

The CHAIRMAN. That is assuming the money was loaned at 7 per cent.

Mr. HOWARD of Oklahoma. That was the question brought out, 7 per cent.

The CHAIRMAN. If you can show me any business man investing his money at 7 per cent, I will buy you a new hat any time or place.

Mr. HOWARD of Oklahoma. You can find in Oklahoma a safe investment at 7 per cent, and even higher.

The CHAIRMAN. Not after taxes, etc., are paid.

Mr. HOWARD of Oklahoma. Do these investments that you make for the Indians bring 4 per cent net to the agency?

Mr. WOODWARD. No.

Mr. HASTINGS. I think a great deal of this discussion should be in executive session.

Mr. ROACH. I think Mr. Hastings is right about that. I tried to correct a false impression I had received at this and the last session.

I think the case of administration of estates is a little different from what it was last session. You recall that we had some 25 exhibits of ward statements before this committee, upon which we figured the average cost of administering those particular estates which were involved in those statements, but, as I recall it, the average was 5 per cent.

Mr. WOODWARD. I have just figured it runs over that.

Mr. ROACH. You have stated it as 18 to 14 per cent.

Mr. WOODWARD. Yes, including the cost of bond of the guardian as one item, that average is based on the total of approximately \$3,000,000. There is no dispute on that, Judge Wilson having testified that the guardian fee was \$250 per headright, \$125 attorney fee per headright, and \$25 to \$50 court costs, and figuring the cost of the bond—the minimum would be \$100, and up to \$1,000 or more, depending on the size of the estate, but, say \$100—if you add those you have \$525 as the minimum cost in this estate. Multiply that by 430 and you have \$227,000, and divide your \$3,000,000 into it and you get 7 per cent as the minimum cost.

Mr. HOWARD of Oklahoma. Do you mean to say that \$3,000,000 is the amount of money that is in the hands of the guardians?

Mr. WOODWARD. No, sir.

Mr. HOWARD of Oklahoma. Then if you take the amount paid last year, you do consider that they handled several million dollars the year before?

Mr. WOODWARD. Figuring on Mr. Howard's average, where they had a balance of \$19,000, and he does not say how many estates or how many years, but including a part of the \$19,000, you have included that 7 per cent to get your result.

The CHAIRMAN. It has been suggested to me that there are two guardians here whom we might hear and, possibly, get some definite particulars from them.

Mr. WILSON. It may be that it will aid the committee in understanding what I have to say in connection with my presentation of this matter, if you will at this time, before we go further, listen to the testimony of Judge Werton and Mr. Humphrey, who are guardians of Osages.

The CHAIRMAN. It is within 10 minutes of the usual time to recess. You may proceed now if you can finish your own remarks before 1 o'clock.

Mr. WILSON. The Congressman from Missouri has asked about what would be an average cost of administration of an estate, and I told him that there was no way to tell the cost, as every case will

stand on its own bottom. I am afraid that members of this committee view our guardianship conditions down there the same as you view conditions in your home district wherein the wards are either children or mental incompetents, and that is not the case here. They are men and women whose apparent natural mentality is almost on a par if not quite on a par with the average white man, but they are deficient, as I want to impress upon this committee, in that they have no competent understanding of values and do not know how to spend money.

Mr. ROACH. That should not affect the cost of administering an estate.

Mr. WILSON. I am trying to show you how that affects the cost of administration of an estate, and it is this: That they have the same wants, the same desires, the same passions that the white man has. The conditions down there are that they have so much money and they are so well taken care of, that there is no inducement for the adult or the child to prepare himself for the management of his own affairs, and they do not do it. The condition with reference to the ability of the old blanket Indian and the younger man who has had all of the advantages of a college education, the ability of the two to take care of their business, is practically the same. The young man who has been given an education at great expense out of his estate, is no more able to take care of his own business affairs or himself than the old man is, and I doubt if he is as well able, with a few exceptions. Now, they are not confined. They go out. They get into trouble. A goodly percentage of them get into trouble. They run over somebody with their cars; they get drunk, and get into jail, and some few of them commit crime. There is always an expense which is entailed upon the guardian which must be taken out of the income of the Indian, which never can get out at interest as you could never know a day in advance what that is going to be.

A few months ago one of the wards of a guardian whom we represent had a collision on the highway near Pawhuska. In the collision the car was overturned. He was badly hurt. We were put to a great deal of expense having to pay the doctor's bill. That collision resulted in the injury of three people, and there are now pending against him suits to recover \$18,000 in damages. We are attempting to compromise those suits for a less sum of money, but if they recover \$18,000, or any other sum, it means the expenditure of a large amount of money which never can go out at interest. We have to hire lawyers.

Mr. HOWARD of Oklahoma. How could expenses of that kind be handled through the department if they were supervising the estate?

The CHAIRMAN. I was just about to ask him to give us the reverse of that picture, under the department.

Mr. WILSON. The reverse of that picture under the department is that they will take an arbitrary stand. They may say that these people who were injured are not hurt. We are taking the stand with reference to the Indian that he is not liable, and yet it is very likely that the proof will be to the contrary. They will take an arbitrary position, and that is where it works a detriment to the citizen.

They will say, "Take \$500, and if you do not like it, get it if you can."

Mr. HOWARD of Oklahoma. If the Indian is under supervision of the department, he has the right to go into court and bring suit the same as against any other guardian?

Mr. WILSON. The citizen?

Mr. HOWARD of Oklahoma. Yes.

Mr. WILSON. He has the right to bring suit, but can only collect judgment from unrestricted funds, not out of money that the department has impounded.

Mr. HOWARD of Oklahoma. Would not the department have an attorney to defend him in cases of that kind?

Mr. WILSON. Yes, sir.

Mr. HOWARD of Oklahoma. Does the department have to hire an attorney to defend them in criminal actions?

Mr. WILSON. Yes, sir.

Mr. HOWARD of Oklahoma. These expenses should be figured against both the department and the guardian.

Mr. WILSON. A great deal of the expenditures to which the department is put are emergency expenditures, or expenditures that can not be calculated in advance. Just a few days ago, since this committee came up here, one of the wards of a member of my firm who can not drive an automobile, but for whom a chauffeur was hired—the ward has over \$100,000 out at interest—had an accident, and in some way or other the chauffeur ran over a little child and killed him. It came up that quick. We are now confronted with a manslaughter suit to defend and also an action for damages. It may be that he gets in jail and we have to take care of him. Then there is the case of a ward, like that testified to by Mr. Lucas the other day, who spends all his money allotted to him for the purpose of taking care of his family in playing craps. There is an emergency. His family must be taken care of. There are innumerable things of that kind.

Mr. HOWARD of Oklahoma. What was that ward's condition?

Mr. WILSON. He and his family were suffering.

Mr. HOWARD of Oklahoma. Could not the Government take care of him the same as the guardian?

Mr. WILSON. The Government could do it. The practical operation of the Government guardianship is that they do not do it; and if they do it, it will cost far in excess of the estimate which Mr. Woodward has given.

Mr. HOWARD of Oklahoma. If the Indian were now arrested for manslaughter, and the Government does not look after him, what becomes of him?

Mr. WILSON. If the Government does not take care of it, naturally he will probably be convicted of manslaughter and will have to go to the penitentiary.

Mr. HOWARD of Oklahoma. You do not mean to say the agency has been neglecting Indians like that?

Mr. WILSON. I do not think so. It defends the case.

Mr. HOWARD of Oklahoma. If one of them needs an attorney, they furnish one.

Mr. WILSON. He is generally represented by the probate attorney. I do not know that they have employed any special attorneys. We are not advised of any order in that matter.

Mr. WOODWARD. No; we do not think we employ attorneys. They usually employ their own counsel.

Mr. WILSON. They are probably permitted to employ their counsel. Counsel are paid by the agency out of Indian money the same as they are paid out of guardianship funds.

Mr. HOWARD of Oklahoma. Where is the difference in these matters between handling the case by a guardian and the agency? Does it cost the Indian more to be handled by the guardian or the agency?

Mr. WILSON. From the standpoint of actual cost, payments out of his money, I believe it would cost a little more through guardianship proceedings. Just what that is can not be intelligibly figured.

The CHAIRMAN. Do you not think that the Indians under the supervision of the agency out there conduct themselves a little better or with more restraint than those who are segregated under guardians?

Mr. WILSON. Absolutely not.

The CHAIRMAN. I am asking for information.

Mr. WILSON. They are the same class of people; get drunk and some will spend more money and contract more debts, because they can legally contract those debts. The Indian under guardianship does not contract debts. Many of the guardians do pay indebtedness if they have contracted it before guardianship. After the appointment of the guardian there are no debts contracted.

Mr. ROACH. You have an Indian who gets \$4,000, who has a guardian. He has an automobile and runs over some one and is cited in court. You say he is spending all the \$4,000 as fast as the guardian will turn it over to him. He has a guardian under the State courts, and when he is sued the guardian comes in and defends the suit, employing an attorney. What would the department do in that case? Here is an Indian spending his \$4,000 that the department is turning over to him, and he has an automobile, and his automobile runs over somebody, and he is sued. The department knows he is spending all of his \$4,000 and that a judgment will not be worth anything if the party gets it. What will the department do about it?

Mr. WILSON. I think in many instances they compromise and pay the judgment.

Mr. ROACH. Do you know that to be so, or are you guessing?

Mr. WILSON. I do not know whether they would do so in large amounts, but they have in small amounts—comparatively small amounts.

Mr. ROACH. Do you know of instances where the department has taken up personal-damage claims against an Indian and settled them?

Mr. WILSON. Not suits; but I know where they have demanded—I have a particular recollection where they have demanded that the same rules apply under guardians that the guardians do.

Mr. ROACH. I want to know the procedure of the department in the particular class of cases you have been discussing before the committee.

Mr. WILSON. I do not know that I recall of any instance, if they do it.

The CHAIRMAN. This afternoon we will adjourn early on account of the funeral.

Mr. WILSON. I would like to offer the evidence of two gentlemen at the present time, and I may state for the information of the committee that one of these gentlemen is vice president of one of the big bonding concerns, which has its headquarters at Baltimore. He has made a personal examination into the condition of these estates in Osage County. We are trying to get in personal touch with him, as we want his information for the benefit of the committee.

The CHAIRMAN. I do not think we can finish this afternoon.

Mr. HASTINGS. As far as these guardians are concerned, they are only individual cases. I have no objection to hearing them; but as far as I am concerned I do not think it would give me any particular information about it. If this committee is going to have it, I would like to know the amount of money turned over to the 435 guardians during the past year, 1923; for instance, "\$10,000 to Bill Smith," "\$11,000 to Jones"; and I would like to see his account balanced at the end of the year so as to see how much is in the hands of the guardian for the benefit of the ward at the end of the year. That gives us definite information, not in individual cases.

I assume that you are going to find, if you take concrete cases, some that are very badly mismanaged. You will find that in every State of the Union. You will find some excellently managed. You will find that in every State of the Union. I do not think, speaking for myself, that it will be very much benefit to bring one or two individual cases before the committee. If you bring 25 or 30 typical cases on one side or the other, not especially selected, but at random, but to represent all the different classes of cases, I would like to see those; but if you are going to bring in individual cases of two or three well managed or mismanaged, I do not think that will give us so much information.

The CHAIRMAN. It is better to have both sides of this question; and, as these gentlemen have appeared here for the purpose of giving us the benefit of their experience in handling individual cases, I think we should hear them.

Mr. HASTINGS. I have no objection to hearing them. I am simply expressing myself as to the value of it.

The CHAIRMAN. We expect to have, later on, details of these guardianships from the probate judge for the benefit of the committee.

Mr. SPROUL. One point is material, to show how much interest on income is derived from the handling of these moneys that go into the hands of the guardians.

The CHAIRMAN. That will be shown in the statement of the probate judges.

Mr. SPROUL. It is material how they invest this money and how much income they get from it.

Mr. HOWARD, of Oklahoma. There enters into that this factor, that for the last three years there has been timidity on the part of guardians in that region to receive for investment.

The CHAIRMAN. I agree with Mr. Hastings. I do not need anything more of the kind he referred to: I think we have had enough of it.

(Thereupon, at 1 o'clock p. m., the committee recessed until 2 o'clock p. m.).

AFTER RECESS.

The committee reconvened at 2.15 o'clock p. m.

The CHAIRMAN. I do not think we need to proceed further with Judge Wilson. I think we have everything he can give us. It is just a question of sitting here and, every little while, getting a new suggestion. I understand there are two guardians who would like to be heard.

Mr. HOWARD. I would like to know whether Mr. Wilson has anything else he would like to present.

The CHAIRMAN. Well, he has had four or five opportunities to tell us his last word. We are obliged to finish somewhere; we can not keep one man on all the time.

Mr. HOWARD. I think we should give him some more time.

The CHAIRMAN. Perhaps, later.

Mr. HOWARD. Either now or later.

The CHAIRMAN. So far I have not seen one definite thing that Judge Wilson has developed. There has been a lot of general talk, but there has been nothing definite put into the record that has cleared up one situation.

Mr. HOWARD. If that be true, I call your attention to the fact that he has been practically interrupted all the way through.

The CHAIRMAN. Suppose we go ahead with the other two witnesses and then, if he wishes to put in a finishing statement, all right.

Mr. HOWARD. Oh, sure. I want everybody to have an opportunity to be heard.

The CHAIRMAN. But we can not continue these hearings indefinitely. We have other legislation beside this.

Mr. WILSON. One of the 25 cases referred to the other day—

The CHAIRMAN (interposing). Mr. Wilson, we want to get some testimony from somebody else.

Mr. WILSON. I am simply going to state the nature of Judge Worten's testimony.

The CHAIRMAN. Let him state his own case.

Mr. WILSON. I would like to state to the committee that he is guardian of one of the estates—

The CHAIRMAN. (interposing). Why can not he tell us that? He is an intelligent man and he is here for that purpose.

Mr. WORTEN. Would you like to have my statement now?

The CHAIRMAN. Yes. I do not think you need an interpreter. Just state your full name and where you reside?

* * * * *

Mr. HOWARD. If everybody is through, I have a request to make. Mr. Wilson, who is here, states that he has never yet been able to get through and make a connected statement. He wants to make a statement to the committee relative to this whole matter, and he says it will take him about 30 minutes in which to make a full, complete statement which he desires to make concerning this bill.

The CHAIRMAN. I suggest it is 20 minutes after 5, and as there are only a few members of the committee here, that Mr. Wilson

submit what he has to say in writing, and it will be put in the record.

Mr. HOWARD. That is to some extent a concession, but there are members who have taken an interest in this measure——

The CHAIRMAN. I do not think they have taken a greater interest in it than I have.

Mr. HOWARD. I think you ought to be able to hear him state his case, instead of him perhaps reading it—I mean that the committee probably will not read it if he submits it in writing.

The CHAIRMAN. I thought perhaps when we have an executive session we can have the commissioner, when we get ready to go into the bill. We have a lot of things to do before that, for instance, we are waiting for the report from the judge of the probate court out there. We have waited for two years for the promise of the last surrogate out there, and have not received it, and I hope we will come nearer to that with this one.

Mr. HOWARD. Mr. Wilson has come twelve or fourteen hundred miles to present his case, and he maintains parties on the other side have taken up most of his time, and I think he feels he will go home not having had an opportunity to present his case before the committee.

The CHAIRMAN. It seems to me the record is pretty full, in the three days that Mr. Wilson has been here, and he has something in it all the way through. I could not say that Mr. Wilson can have 30 minutes uninterrupted time, because any committee member can break in.

Mr. HOWARD. I understood Mr. Humphrey was to go on the stand.

Mr. HUMPHREY. That is all right.

Mr. HOWARD. I would like Mr. Wilson to make a 30-minute talk before this committee. He complains that the other side took up a great deal of his time, and he has not been allowed to connect up his statement and present his case as he wanted to.

The CHAIRMAN. He certainly had the same opportunity every other witness had who has been here. There is no way of which I know that a witness can be protected except by unanimous consent. If unanimous request was made that the witness have 30 minutes without being interrogated, why, then, I suppose everybody would let him go ahead and use his time.

Mr. HOWARD. That would be rather unfair to the hearing if some one wanted to ask questions.

The CHAIRMAN. He would be in exactly the same shape during all the period. He has been trying to give to the committee the benefit of his knowledge. We are wasting part of the time he might be using by this discussion.

Mr. HOWARD. I make the request that he be given 30 minutes to make his statement, either to-night or to-morrow at 10.30.

The CHAIRMAN. As far as I am concerned, the committee can not convene to-morrow. We have some important legislation on, and Congress convenes at 11 o'clock, and I must have a little time to look after my own business.

A request has been made that Mr. Wilson be permitted to proceed 30 minutes without interruption, and if there is no objection, Mr. Wilson, you may proceed.

Mr. WILSON. A great many of the things I probably would have said, had I had earlier opportunity to make my statement, have, I think, been cleared up. Some of you gentlemen who are now here were not here when I made a preliminary statement, and I desire to state this, that I am here as a representative of the Bar Association of Osage County. That, in turn, is representative of a number of the business interests of that county, and our purpose in asking an audience of this committee is that we may state our position with reference to the proposed legislation. What we ask is not for the benefit of any tribe of Indians or any class of individuals, but it is for the best legislation possible to the end that the people of Osage County and the district of the State of Oklahoma, in which Osage County is located, may have that natural advantage of having the wealth which has its source in the great natural resources in Osage County, go in the ordinary business channels of Osage County and that part of the State in which it is located.

We realize that the first duty of Congress is toward the Indians, the owner of this great wealth there, and we realize that such rights as the other citizens have are secondary to the rights of the Indians, and that it is your duty to consider them first.

Mr. ROACH. I think you ought to discuss the merits or the demerits of this bill. We have consented to hear you for 30 minutes and I will not stay unless you confine your remarks to the merits and demerits of this bill.

Mr. WILSON. The position we take is that the guardianship system is not only for the best interest of the Indian but it is for the best interest of the public in that neighborhood, for this reason, and it seems to be hard for members of this committee to understand its importance for the Indian to have not only his purely financial guardian, but it is important and is worth the extra cost in maintaining guardianships in personal contact and personal interest, the personal interest which the guardian gives the Indian himself, and that is important, and it seems to be hard for this committee to understand that.

We have the testimony of Mr. Lucas, which a number of members of the committee did not hear, which was illustrative of that close personal attention which a guardian gives, and we have had the testimony of Judge Worten. It is true that the same degree of attention is not given the ward by every guardian, but that is fairly illustrative of the attention given the ward by the guardian.

In many instances a ward is himself a drunkard, or he is connected in some way with a drunken spouse. His children are in need of attention, his family in some way may need attention. There may be conditions whereby he needs to expend in excess of \$4,000 a year, and the guardianship system is more elastic. It has this advantage, as it exists at this time, of the law of March 3, 1921, of permitting the guardian to apply more than \$4,000 of the Indian's funds to his care, keep, and maintenance, if the necessity arises.

Mr. ROACH. This bill permits the same thing, except this bill first requires that the necessity, or the question of necessity, be submitted to the consideration of the department. It would have to be submitted to the guardian on the other hand.

Mr. WILSON. That the guardian can be called by telephone, as in many instances, is true, and he gets in his car in the night and rides for miles. The circumstances might be that the ward can go to his office and place of residence.

Mr. ROACH. On the other hand, one of the field investigators can go right there and make his report to the agency.

Mr. WILSON. But you heard the testimony of Mr. Worten to the effect that in many instances a ward would go to his office three or four times a day. I know of other instances. I particularly recall an instance where the ward is at the office of the guardian practically every day when he is in Pawhuska; he is there most of the time, and sometimes three or four times a day. You can imagine the difficulty and the expense to the department in maintaining a corps of officials sufficiently large to give attention to this great number of guardians, many of whom demand a great amount of attention. For instance, suppose there are 100 wards who want to appear before the agent and make their complaints in a day, and that is not unreasonable, because every day of the year at least 100 wards appear before their guardians, maybe 50 or 100 of them.

The CHAIRMAN. And maybe 25.

Mr. WILSON. And maybe 25, but hardly that number, because the average is only about, according to the figures you made, two wards to a guardian, although some have more; others have less, but that in the aggregate takes up a good deal of time. These same wards would make the same complaints and ask the same questions and appear at the agency for the same purpose, and you can imagine the conditions which would exist if 100 of them, say, had demands to make, fully 100 a day, and to maintain the corps necessary to take care of that business, which would entail the expenditure of as great a sum of money as is entailed in taking care of the extra expenses in maintaining the guardianship.

There is a great advantage of guardianship, if permitted, and, while under the strict interpretation of the law they are permitted to do so now, most guardians are inclined to follow the interpretation of the law, which is placed upon it by the Interior Department, and to invest these funds in bonds or low interest bearing securities, or keep them on deposit in the bank at about 4 per cent interest; whereas, if permission were given to the guardians by law, they could invest all this money in higher interest-bearing securities, principally land securities, and while the proposition is to permit it to be invested in Osage County mortgages, I think it may possibly be extended to be invested in Oklahoma mortgages, but however, that may be, it is to the advantage of the Indian.

He is brought in personal contact. Now I have the highest respect for the ability and integrity of Mr. Wright, and for his assistants, and I do not impugn the integrity of his motives, but I think you gentlemen, who are Members of Congress and have had experience with bureaus, know the difference between bureau management and personal management, and Mr. Wright is characteristically bureaucratic, and he gets in a certain rut of procedure and follows a certain beaten trail, and it is his natural disposition to adhere to his own idea and his own ways.

With reference to this joint guardianship—

The CHAIRMAN. Usually his own way is within the law, is it not?

Mr. WILSON. Well, he tries to be within the law.

The CHAIRMAN. Usually it is within the law, is it not?

Mr. WILSON. I think so; I do not mean to cast any reflection on his integrity as a man.

The CHAIRMAN. No.

Mr. WILSON. As I said, but we feel this way, that to give to Mr. Wright or to give to the Secretary of the Interior through Mr. Wright, as superintendent of the Indian agency, the right to determine whether or not he will pay these moneys to the guardians, and the right to supervise the expenditure of guardianship moneys, and the amount to be placed in Osage County under the supervision of the Secretary of the Interior, and the men directly under the supervision of the agency—we do not feel that is for the best interests of the Indians.

I can not go into as great detail in the matter as I had expected to when I came here, because of the limitation which has been placed upon my time. I would like to go to a greater extent in detail with reference to the personal touch between the guardian and the ward, and the importance of that matter, but I can not do it.

I would like to cite instances of that kind, but I have not the time at present to do so, but that is the condition. You gentlemen are here 1,500 or 1,600 miles away, and it is hard for you to appreciate that, but that is a fact, nevertheless.

Mr. ROACH. Give us credit for thinking something along that line.

Mr. WILSON. I am satisfied you do think something along that line, but it requires almost a personal contact for those conditions to be appreciated.

Now, there are 400 Indians under guardianship in that county. They want to talk with these guardians personally—little matters that they can not take up; that is, that the agency can not. There would be little matters to which the employees would not be able to give their personal attention as the guardian could, because there is an intimate acquaintance that would arise between guardian and ward.

I am willing, now, gentlemen, to answer any questions.

The CHAIRMAN. You have about 12 minutes left.

Mr. WILSON. I will answer any questions you gentlemen desire. I am not a guardian and have not an intimate personal relation with guardianship affairs, but is there any matter you think I can advise you about, gentlemen, that you would like to ask me about at this time?

The CHAIRMAN. I have no questions.

Mr. WILSON. There is one matter, however, that I would like to state at this time. I made a statement here yesterday which I understand certain gentlemen have misconstrued, and that is with reference to the proposed purchase of 350,000 acres in New Mexico, and I stated that some of the gentlemen to whom I have reference attributed an intention to me to question their integrity in regard to that matter, and it may be that some members of the committee felt that I was questioning the integrity of the gentlemen in reference to this particular matter, and I want to say it was far from my intention to do so.

I know these gentlemen personally, because some of them live at Pawhuska, and they are men of high integrity, and the only thing I meant when I made reference to this matter was that the trip, or this proposition, was considered of sufficient importance that Mr. Woodward was induced to take the trip there and investigate it. I think those whom I represent feel that an investment of that kind would not be for the best interests of the Indians, and we felt no interest would accrue, and it would result in taking away from our channels of trade \$3,000,000, which ought to be left there.

Mr. ROACH. The committee is entitled to full information from the department in reference to the ranch in New Mexico.

Mr. WILSON. I do not care to discuss the matter. I want to state that I had no intention whatever to reflect on these gentlemen or impugn to them any corrupt motives. I understand that some of these gentlemen feel that I did have such a motive, and I want to assure you and assure these gentlemen that I had no such intention.

Mr. ROACH. You are questioning the wisdom of that investment?

Mr. WILSON. Yes, sir; because if that investment were made, so much money would be taken from the trade in that community that it would hurt it, and that money, in our judgment, out to be left there; it should remain.

Mr. SPROUL. Osage County in its entirety was originally the property of the Osage Indian people.

Mr. WILSON. Yes, sir.

Mr. SPROUL. The whole of the county was their property?

Mr. WILSON. Yes, sir.

Mr. SPROUL. Pawhuska was their capital or county seat?

Mr. WILSON. Yes, sir.

Mr. SPROUL. And within the past two years a great many white people have moved in there for business reasons?

Mr. WILSON. Yes, sir.

Mr. SPROUL. To get hold of as much of the Indians' money as they might get?

Mr. WILSON. Possibly so.

Mr. SPROUL. In a legitimate way.

Mr. WILSON. Yes, sir.

Mr. SPROUL. Until Pawhuska, from a small town of a few hundred people of a few years ago, has grown into quite a city?

Mr. WILSON. Yes, sir.

Mr. SPROUL. And likewise have the estates of the Indians grown into big proportions?

Mr. WILSON. Yes; that is true.

Mr. SPROUL. Now, do you not think that the controlling idea with the Government of the United States should be the welfare of the Osage Indians?

Mr. WILSON. It is and ought to be; yes, sir.

Mr. SPROUL. The dominating idea?

Mr. WILSON. The first consideration of Congress should be for the welfare of the Osage Indians and for the conservation of their wealth.

Mr. SPROUL. It is perfectly natural that you and those whom you represent should be interested in your affairs, your welfare, as the controlling idea.

Mr. WILSON. The Member, I think, from New Mexico, made a suggestion that we had a selfish interest, and I am frank to admit it is selfish.

Mr. SPROUL. You can hardly help it?

Mr. WILSON. We can hardly help it, because we feel that way, that, notwithstanding the fact that the great wealth belongs to the Osages, the Osages can't keep all of it, all of that great wealth, and some of it gets into the channels of trade, and when it gets into the channels of trade it comes in contact with the people adjacent to these channels through which it runs. To that extent, we have a legitimate interest. We do not deny it. The Indians can not keep it all. The advantage of guardianship is this, instead of the money being put in large sums in a few depositories, or paid out by a few people at certain places, the distribution should be over the county and adjoining counties.

Mr. SPROUL. What, about, is the population of Osage County?

Mr. WILSON. In the neighborhood of 50,000 at this time.

Mr. SPROUL. What per cent of that population do the Indians who live there comprise?

Mr. WILSON. I think it is regarded as about 1,500 or 1,600.

Mr. SPROUL. About 1 out of every 30 or 40 is an Indian, has Indian blood, or is there a smaller percentage of Indians?

Mr. WILSON. I think it can be said there are 1,600 of them. That is 1 out of 40. But while we are there to profit in a legitimate way, and some have profited illegitimately, laws can not help that. We are there to profit, and to profit in every legitimate way possible, not only by the wealth, but we exercise a beneficial influence and a civilizing influence over the Indians. They do not absorb as much as they might, but all their knowledge of the civilization comes from that country. It is gotten from constant contact with us, and all I claim is, while it is a selfish claim and it is and should be a secondary consideration on the part of Congress, because your first consideration and first duty is to protect not only the Indians but to conserve his wealth, that is not the only thing. There are other things which are bound to emanate from that great wealth, benefits that can't be retained entirely by the Indians; that through the channels of trade enter into the prosperity of the people of the communities all along those channels of trade, and the individual prosperity of the individual citizen, and that is all that we have a right to ask Congress to consider, and that is all we are asking Congress to consider; but we do contend that the best interests of the Indians in having his funds expended is through the guardianship system.

The condition of guardianships, as you will see from this great mass of reports which will be filed with you as soon as we can get them together, will be this, probably, that a great deal of money has been expended, but you will notice that large sums of that money have been expended in the payment of debts, and when the debts are paid there will be no chance to go into debt again. The Indian can not go into debt again, and the only legal debt that can be contracted by him is such as is contracted for him or for his benefit by his guardian.

Mr. ROACH. I got that impression when the act of 1921 was under consideration. How will you stop these Indians now in exceeding the amount Congress awarded to them from going into debt.

Mr. WILSON. I do not know. We are not particularly interested, as I said at the outset, concerning how much money the Indian gets; if I am answering your question, we are not particularly concerned in saying the Indian should get \$4,000 or \$8,000 in cash.

Mr. ROACH. Say he gets all his money, and has a guardian; he is goin into debt \$260,000 in three years' time, and it will only be a question of a short time until he is dead broke and on the hands of the Government.

Mr. WILSON. You misconceive the conditions, because those Indians under your guardianship are not in debt. The only debts the Indians under guardianship have the debts they contracted for themselves prior to guardianship, and the guardianship takes up that debt, and however careless people may be in dealing with the Indian who is under the Osage superintendent's supervision they do recognize the condition of guardianship.

Mr. ROACH. They go around paying the debts.

Mr. WILSON. Not always. The Indian does not contract. He goes to his guardian.

Mr. ROACH. I think you must be mistaken about that. We have 450 guardianship down there now, and over and above \$260,000 debts.

Mr. HOWARD. Those are not the guardianship Indians.

Mr. WILSON. That \$260,000 indebtedness is the indebtedness of the Indians not under guardianship. In addition to the \$260,000 the Indians have gone into debt in large sums represented by amounts that have been paid or are being paid by the guardians. That \$260,000—not one single dollar that Mr. Wright mentions is a debt of an Indian under guardianship.

Mr. SPROUL. Except those who contracted the debts before they got this guardianship.

Mr. WILSON. No, sir.

Mr. SPROUL. Mr. Lucas testified he was a guardian.

Mr. WILSON. That is not considered in the amount Mr. Wright details as being \$260,000.

Mr. SPROUL. You spoke of offering a lot of records. Will you show, for the benefit of the committee, what proportion of the money on hand to the credit of the Indians in the hands of the guardians has been bearing interest during the past year?

Mr. WILSON. I can't show what has been bearing interest during the past year, but the report will show what is bearing interest at the time of the report. The report that Judge Worten made out and brought here, and he testified from a yellow sheet copy. We have a few of those here, and Judge Justus is here, and arrived Monday, and said at that time that a great many others had been mailed. They have not arrived yet. They are gotten out in that form.

Mr. SPROUL. The money on time deposit in the banks is taxable property?

Mr. WILSON. Yes, sir.

Mr. SPROUL. And it bears a rate of interest of 4 or 4½ per cent?

Mr. WILSON. Some of them get around it in this way, that before the end of the year they buy nontaxable securities with all their money they do not expect to use.

The CHAIRMAN. I will say for the benefit of the committee that it is hoped within the next week or 10 days that we will have a complete report covering these guardianships, and unless there is objec-

tion the so-called public hearings on the question will close to-night, and that further meetings will be executive meetings, and the meetings covering this question will be subject to the call of the chairman when there is sufficient matter on hand to call us together again for the discussion of the bill, and unless there is some objection to that we will stand adjourned on this matter in that form, subject to the call of the chairman, and I will call the committee as soon as I have the matter in hand.

(Whereupon the committee adjourned.)

Mr. WOODWARD. Of course you will do that. There has been a reference made by Judge Humphreys to extravagance in certain accounts of Indians which the audit shows the guardians are short several thousand dollars, and exorbitant fees have been charged, which—

The CHAIRMAN (interposing). I think, in justice to the guardians, it ought to be explained there that counting them short means that they have spent some money which the auditor thinks they ought not to have spent; but that is not a question. That has not been adjudicated. They are not short in the ordinary understanding of the word.

Mr. WOODWARD. I have not finished yet. And I want to say that we have not been emphasizing, either before your committee or the other committee, that particular phase of the guardianship cases in Osage County. What we have been laying stress on is just this point, and I want to emphasize this once more before we leave, this money which is being spent by the probate courts and through the probate courts is Osage Indian money, and they are protesting against the use of their funds in the probate court after Congress has already made an appropriation to do this same work through the agency. They have a right to protest against this, and right along this line I want to quote from a speech that was made—

The CHAIRMAN (interposing). Just a minute on that question. These expenditures do not come out of tribal funds. They come out of the funds of the individuals.

Mr. WOODWARD. Which expenditures?

The CHAIRMAN. The expenditures you speak of incurred in the probate court after the Government has provided for the same work to be done by the agency.

Mr. WOODWARD. I am speaking of both, both those of the agency and the courts. The agency expenses are tribal expenses. The court expenses are individual expenses. These expenses in the court are not, of course, paid from tribal funds, but by the individual Indian after the guardian is appointed.

The CHAIRMAN. The individual Indian, then, could prevent the payment of them if he wanted to, by dispensing with his guardian and not having one. Don't you think, if he wants to spend that money for a guardian that that is one of the things he has a right to do?

Mr. WOODWARD. Well, they seem to think, and you have had several of them testify before you to-day, and there have been far more of them who have appeared before the House committee, that they can not afford that luxury any more. We want to fix this law so there won't be any excuse for them to ask for a guardian. They all tell you it is to get more money. If we can amend the existing law,

the act of 1921, so that they can have their wish complied with in that respect, there won't be any need of requesting these appointments of guardians to get more money.

The CHAIRMAN. The important thing about it is I do not think the Indian ought to have to have a guardian if he does not want it, but I believe if he wants to spend a little money for a guardian he ought to be allowed to do it.

Mr. WOODWARD. I do not agree with you. I think that the United States is the first and proper guardian to see to it in making the laws that it is not necessary and that he should not want and should not need a guardian appointed by another tribunal to take care of his affairs. I contend that that first duty devolves upon you, and you gentlemen in Congress could fix it so he would not have to go to court and get these things.

The CHAIRMAN. There are two sides to that question. The act of Congress which makes them the ward of the Government imposes upon them a guardianship not of their own choosing, while if they go into court and choose their own guardian, if they are competent to do so, it would be a privilege of choosing a man to handle their funds that they want to handle them. I am just differentiating between the two.

Mr. WOODWARD. I want to call your attention to these Indians who have testified before you to-day, to the effect that they would rather have this business, all things being equal, handled by the Government than have it handled by the probate court.

The CHAIRMAN. I think a great many of them would.

Mr. WOODWARD. And I am very sure that a canvass of the tribe, especially of the full bloods who are most affected by the act of 1921, and by this proposed law, would show practically 100 per cent pure for the handling of their affairs outside of the probate court. They go there just for one reason, and that is to get more money than they can get through the agency. As Roman Logan told you this afternoon, they ask for something which by law is not permitted the superintendent to give them, and they can not get it. Then they go out and, either through the influence of some fellow who wants to be their guardian or possibly by the request originating with the Indian, have some one appointed guardian in the hope and expectation that they will get more money. That is all there is to it.

The CHAIRMAN. Have you anything else to say?

Mr. WOODWARD. I think that is all at this time.

Mr. HUMPHREYS. My attention was called to this, so far as my testimony was concerned. One of the things intended to be shown was that the department would be able to handle the probate matters at a great deal less expense than through the probate courts. In other words, it is my information that the record shows that in the handling of guardianship matters by the department for the Indians about \$20 per head is all it costs.

The CHAIRMAN. There is no question about that, I guess.

Mr. HUMPHREYS. I just wanted to make that statement. That is all I have to say.

The CHAIRMAN. The committee will adjourn without day.
(Whereupon, at 5:20 p. m., the committee adjourned.)

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OSAGE FUND RESTRICTIONS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

SIXTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 2065 and S. 2933

BILLS TO MODIFY THE OSAGE FUND RESTRICTIONS
AND FOR OTHER PURPOSES

MAY 13, 15, 16, 19, 20, AND 21, 1924

PART 2

Printed for the use of the Committee on Indian Affairs



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OSAGE FUND RESTRICTIONS

TUESDAY, MAY 13, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 10 o'clock a. m. in the Committee on Indian Affairs hearing room, Senate Office Building, Senator John W. Harreld (chairman) presiding.

Present: Senators Harreld (chairman), Curtis, McNary, Cameron, and Dill.

Present also: Hon. Charles H. Burke, Commissioner of Indian Affairs; Hon. Edgar B. Meritt, Assistant Commissioner of Indian Affairs; Mr. J. George Wright, superintendent of the Osage Agency; Mr. Paul N. Humphrey; and Mr. Arthur Woodward.

The CHAIRMAN. Since the former meetings of this committee on Senate bill 2933, the House has passed H. R. 5726, and it is now pending before this committee of the Senate, having been reported to the Senate and referred to this committee. H. R. 5726 is identical in terms with Senate bill 2933, and hereafter the hearings will be in connection with both these bills.

Now, I think the thing to do is to have the department introduce whatever testimony it has at this time, and then, when they get through, we will hear the other side.

Mr. WOODWARD. We have presented our case at the former hearing before the committee, and are resting until the opposition puts in whatever testimony they have. At this time we have nothing further to offer.

Mr. BURKE. We suggest the following amendment to the bill pending:

That hereafter none but Indian heirs of those who are of one-half or more Indian blood of the Osage Tribe of Indians shall inherit or acquire any right, title, or interest by inheritance in or to any restricted lands, moneys, or mineral interest of the Osage Tribe or of any enrolled member thereof: *Provided*, That if there be no heir as above provided of the Osage Tribe or descendants of such person to take by inheritance, such lands, moneys, or mineral interest, the said property shall revert to the Osage Tribe of Indians.

The CHAIRMAN. I will ask you to explain the effect of that.

Mr. BURKE. The effect of the proposed amendment is simply to preclude this Osage estate eventually going to white people, as a very large part of it will. In the Creek agreement there was a provision to the effect that only those of Indian blood would participate in inheriting the estate and, as the chairman and the committee know, there is a tendency on the part of white persons to marry into the Osage Tribe because of the wealth that they have; and the intention of this amendment is to keep this estate so that

it will not go to other than Indians, except that, I believe, we now recognize an Indian of half or more.

Mr. Wright is here and has some figures. I would like to have him give you a brief statement as to what is about to happen.

The CHAIRMAN. One question there. The only complications I can see that might arise are these: The tribal rolls are closed, are they not?

Mr. BURKE. Yes, sir.

The CHAIRMAN. Now, as to a child born with Indian blood, how will he be retained on the rolls?

Mr. BURKE. He is not on the rolls.

The CHAIRMAN. Does this preclude him from inheriting?

Mr. BURKE. Not if he is of Indian blood.

The CHAIRMAN. If the rolls are closed, how are you going to show that? Will it not necessitate keeping the rolls open?

Mr. BURKE. Not at all. It is not a question of enrollment. It is a question of determining who the heirs of deceased members may be. If such a person should be a white person, he would not inherit under that amendment.

The CHAIRMAN. Where would that have to be established, that they had Indian blood or not?

Mr. BURKE. The same way it is established in the Creek Nation.

The CHAIRMAN. In the courts?

Mr. BURKE. Certainly. I would like to have Mr. Wright make a brief statement.

STATEMENT OF MR. J. GEORGE WRIGHT, SUPERINTENDENT OF THE OSAGE AGENCY

Mr. WRIGHT. My attention has recently been called to the fact that is well known, that since the Osage Indians are receiving considerable money there is a natural tendency of the white people to marry into the tribe. During this fiscal year we paid \$12,400 per capita to those who are enrolled or their heirs. Since the Osage Indians have received large per capita payments from their oil and gas, there have been a good many white people married into the tribe and, under the laws of Oklahoma, in case of the death of any member of the family, the white husband of the wife inherits a third. As a consequence, during the past year about 135 white persons have inherited from one twenty-fourth of a share to two shares each, which shares during the last fiscal year amounted to \$12,400 each. So there were paid to those white persons during the past year approximately 65 whole shares, which aggregated \$843,000.

Now, there were enrolled originally and sharing in these payments 2,229 members. The rolls were closed in 1907. Of that, 2,229, there are 1,629 now living, and of those 1,629 there are 757 white people married into the tribe, nearly one-half of them. There are 606 that have died out of the original number. Those who have been born since 1907 do not share in these distributions except through inheritance. There have been born since 1907, 476 persons, but only 113 of those inherited or shared through inheritance.

Now, there were originally 930 full bloods. There are living today 513; 417 have died. Of those living, 99 married to white people.

Of the 1,110 living mixed bloods, 638 have married to white people. Now, of that number, there are 41 living enrolled minors under 21

years of age. Of the full bloods, 19 of those are married to the whites, 22 to Indians. Of the 48 living enrolled minor mixed bloods, there are 36 married to whites and 12 to Indians.

Now, under the proposed law that is pending here, the enrolled minors will receive \$1,000 quarterly instead of \$500 quarterly as at present. That \$1,000 quarterly under the proposed bill will be paid to the parents for the maintenance and education of the minors. They are receiving now \$2,000 per annum for each of their children. Under the proposed bill they will receive \$4,000. It is only natural to assume that there will be a greater incentive for white people down there to marry these young Indian girls than at present, and the commissioner has deemed it advisable to call the attention of the committee to the fact that unless something is done, in a few years you will be paying more white people than Indians.

Now, in the Creek Nation in the Five Civilized Tribes only Indians by blood inherit Creek property. That is provided for in the supplemental agreement of 1902. The same is true in the Seminole Nation. The enabling act approved June 16, 1906, admitting Oklahoma and Indian Territory as a State, provides in part as follows:

Provided, That nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territory (so long as such rights shall remain unextinguished), or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise which it would have been competent to make if this act had never been passed.

The CHAIRMAN. Is there anybody who wants to appear in opposition to this amendment?

(No response.)

The CHAIRMAN. Is there any other amendment to be offered to the bill?

(No response.)

The CHAIRMAN. I believe you announced that you rest now, Mr. Woodward?

Mr. WOODWARD. There is one part of that bill that the Indians object to. After they left here about the 3d or 4th of April the Indians in council objected to the passage of section 4 of Senate bill 2933, which authorizes the Secretary of the Interior to—

The CHAIRMAN (interposing). That pertains to the revocation of certificates on proper showing?

Mr. WOODWARD. Yes; and before these hearings are finished this week the council will submit an amendment to that section.

The CHAIRMAN. They have not that amendment ready now? I would like to get all those things in here.

Mr. WOODWARD. He will get it for you to-day.

Mr. BURKE. If the bill is going to be reported, we would like to suggest that before it is finally acted upon there be a provision inserted making it effective July 1 as to payments. That would be more desirable.

The CHAIRMAN. I suggest that the proponents of the bill ought to file with the committee a list of the amendments as they have been introduced here so that when we have our executive session we will not overlook them.

Mr. WOODWARD. We request the privilege of being heard in rebuttal.

The CHAIRMAN. Now—I am speaking now to the members of the committee—the chairman is getting a great many telegrams and letters opposed to this bill. What shall I do with them? Shall I put them into the record? It seems that the governor of the State and the bankers' association of the State and the commercial clubs of the various towns in the State are opposing the bill or certain parts of it. I have a great stack of correspondence about it. I do not want to encumber the record, but the committee ought to have this information. They are objecting to it on the ground that they are looking after the interests of the Indians in opposing this legislation. These letters and telegrams ought to be considered. We have, for example, a strong letter from the bankers' association of the State.

Senator McNARY. I suggest we leave that to the discretion of the chairman.

The CHAIRMAN. Well, I am not going to print these letters in the record, but they are open to anybody who wants to see them. I do think they ought to be considered by the committee when it meets in executive session. They are very cumbersome and will encumber the record considerably, and I will not introduce them unless somebody demands that they be introduced. There seems to be quite a concerted objection on the part of the business interests of the State and by the State administration against this kind of legislation.

Now, are the interests opposing the bill ready to introduce their testimony?

Mr. HUMPHREY. I think that probably there might be some Indians here who may care to be heard before we start. A good many Osages are here. I know there are Indians here opposed to the bill, but I do not know whether they want to be heard or not.

The CHAIRMAN. Do any of you folks want to be heard on this matter?

Mr. McCARTHY. I do.

STATEMENT OF MR. EDGAR McCARTHY, HOMINY, OKLA.

Mr. McCARTHY (through interpreter). I appear before this committee to-day for the purpose of opposing the pending bill. In that connection I have a petition here which I should like to present to the committee.

The CHAIRMAN. You had better file your petition right now. (The petition thereupon filed reads as follows:)

To the Congress of the United States:

We, the undersigned full-blood adult members of the Osage Tribe of Indians in Oklahoma, do hereby respectfully petition your honorable body for your aid in our behalf.

In the early part of 1921 we requested Congress to extend the mineral trust period for a term of 25 years, which request resulted in the act of March 3, 1921, extending the mineral trust period for 15 years but contained many other provisions changing the allotment act of June 28, 1906, which we had not requested, which provisions have been very detrimental to us.

Whereas the Osage Tribe of Indians is now represented in Washington by its principal chief and tribal council, with many other members of the tribe being present, such members and persons being present for the purpose of obtaining the best results for the Osage Tribe of Indians; and

Whereas the superintendent of the Osage Indian Agency was sent to the Osage Reservation to look after the interests of the Osage Indians, we believe that he has no right or power to influence or control tribal matters, and we respectfully call the attention of your honorable body to same and ask that such conduct be discontinued; and

Whereas we believe that the annuity payments to the members of the Osage Tribe of Indians should be made as provided for in the allotment act of June 28, 1906, can not be held under restriction and paid out under supervision for the reason that this money comes from property the title to which belongs to the Osages, and we object to being supervised by the department in the handling of these funds; and

Whereas the full-blood members of the Osage Tribe of Indians have no knowledge of how their surplus land tax, land sales money, minors' money, loans to the Government and to the State of Oklahoma, and the moneys held up by the act of March 3, 1921, etc., are being handled by the Department of the Interior; we believe that all these and other matters should be investigated by Congress before any further legislation is passed for the Osages; that the Congress and the Osages may have more definite and full information before further action in the matter is taken: Therefore be it

Resolved, That the undersigned members of the Osage Tribe of Indians is not in favor of the passage of any legislation for the Osages until such time as a committee from Congress can come to the Osage country and investigate the true and real conditions for themselves, and at which investigation the members of the Osage Tribe may be permitted to appear and give their views to the committee without any intimidation from others; and we object to having a tribal council, whose members have certificates of competency, prepare legislation for we members who are without certificates of competency, as the members with certificates have no interest in our welfare.

(The petition above quoted is signed by 130 restricted full-blood members of the Osage Tribe of Indians.)

Mr. McCARTHY. A bill has been introduced by the Osage council which is now before the Senate Committee on Indian Affairs. That bill held up our money. That is the one particular matter that I am interested in, and I am here to-day in regard to that money matter. The Osage people have a bill which is known as the allotment bill. That bill contains provisions covering our money and land, and it has six years to run. For the last three or four years the Osage people have been before the Congress and they asked for an extension on that bill. All that Congress did was to extend the mineral rights but it never extended the allotment act. That is the thing I am here for to-day.

The CHAIRMAN. Do you mean by that that you would like to have that allotment bill repealed?

Mr. McCARTHY. We were asking for an extension on that allotment act.

The CHAIRMAN. You do not like the other part of the legislation extending the time? Is that the part that you are opposed to?

Mr. McCARTHY. Well, this allotment act has never been extended in the way that we wanted it. We asked that the time be extended, but just the mineral rights were extended, and there are six more years to run on that allotment act. Beyond that six years I do not understand what kind of a law we are going to have to be governed by. The Osage people do not understand this bill that is before the Senate committee at this time; and the majority of them are opposing the way the money is to be handled by these people. We are not in favor of being under supervision. In appearing here, I am not influenced by anybody. I am here for the welfare of the people, my people, the Osage people. I want them to have a fair and square deal in the way of making a law for my people.

I do not understand this bill, particularly the way it provides for our money and the way it is to be invested. If it has been invested for us, I do not understand how and where we are going to get the interest on that investment.

Senator DILL. He wants the money, doesn't he? He wants the payment of the money to them?

The CHAIRMAN. The Indians all want all the money.

Senator DILL. That is what I thought.

Mr. McCARTHY. I am not asking for the money, but I am talking about this supervision. The majority of the people, the Osage Indians, are trying to improve their homes and to have a home that would look like something. Under this bill it seems as though we can not have anything that would make anything pleasant; therefore, I ask for more money. I ask for what is mine and for what belongs to my people, without the supervision. What money belongs to the Osage people is theirs, and I think they ought to have the full use of it. I do not think it is right to take this money away from the people and give it to some other people for their benefit. I do not think it is right for anyone to overpower the people and take their money and stop them from using it in the way that they see fit. I do not think that is right. This money belongs to the Osage people, and I think that they ought to be allowed to use it as they have in the past.

It is true that there are people, just as it is true with all classes of people, that do not use their money in the right way, but that is just true as to a few of them. That does not mean that the whole tribe should suffer. I do not think that the bill is right.

The petition I present is for the purpose of showing you that a majority of the people are not in favor of this bill. I want the members of the committee to reason this petition over for me and try to help me so that this money will be paid to my people in the right way. In that petition we are asking for an investigation of the Osage affairs, and by doing so I think you will find out things that this committee would be very much interested in, in the way of helping the Osage people. It might be that the committee knows more about our affairs than we do, but the Osage people do not understand the way in which their affairs have been handled. There have been changes made, such as the 1912 act, and all those things have never been explained to the Osage people and they did not know anything about that and things like that have become a law which we are affected by at this time. Some of our people do not understand anything about these things and how they became a law.

Those are the reasons for asking that this bill be explained to the people. That is why we are opposing this bill at this time. This 1921 act also has never been explained thoroughly to the Osage people, and they did not understand what they were getting or what kind of a law they were getting. They did know that they were asking for an extension of what we call the allotment bill, and they thought that the entire bill was to be extended and they found out that just the mineral rights had been extended, and now they are trying to make a provision to handle the money. That is the part that we are opposed to, that the majority of the Osage people are opposed to.

The CHAIRMAN. Do I understand that by that you mean to say that the Indians themselves did not understand the 1921 act?

Mr. McCARTHY. Yes, sir.

Senator CAMERON. Is not your objection to this bill based entirely upon the fact that you want all your money paid now, just as it was before this amendment of 1921?

Mr. McCARTHY. Well, I want this money paid out to the Osage people. It was paid under what we call the allotment act that was approved by the Congress June 28, 1906.

Senator CAMERON. Wouldn't he be satisfied with this bill as amended if he can not get the Snyder Act annulled?

The INTERPRETER. From what he says, he would not be.

The CHAIRMAN. He wants the Act of 1921 repealed.

Senator CAMERON. He gets more money under this act. Wouldn't he be better satisfied with this bill as amended than he is with the present act of 1921?

The INTERPRETER. No; he would not be satisfied if it were amended because it does not give him the power to control his money. You give it to somebody else.

Senator CAMERON. The only thing that would satisfy him is to have all his money paid by the Government now.

The INTERPRETER. Like they have been under the allotment act. That is what he wants. It was paid out to the people every three months, their share of any money.

Mr. McCARTHY. It is fair enough that the department is claiming that the Osage people have had their money frequently. It is true that anybody, no matter what nationality he is, if he has plenty of money, has the right to use it for whatever he sees fit. This money belongs to us, and I think we have sense enough to know how to use this money—at least, the majority of our people have. It is fair enough that we want to be protected by the Government, but we want to have more privilege than we are getting under this bill. It seems as though we are tied up under this bill so that we can not do anything.

Senator CURTIS. Has he considered the compromise bill that was suggested by Mr. Leahy, Mr. Humphrey, Judge Wilson, and Mr. Snyder in the House? It was printed in the record before. Does he know anything about that?

The INTERPRETER. He says he does not understand; that he has never seen it and does not know anything about it.

Senator CURTIS. I understand, Mr. Chairman, that this bill—I have not had time to consider it—is satisfactory to the various elements down there. Judge Wilson, who very strongly opposes this legislation, and Mr. Leahy took a middle ground; and I understand it has your approval. Then why not substitute that bill for the House bill? We could pass it in conference and settle all these difficulties. This man has referred over and over again to their moneys, and I think we all understand what he means.

Mr. HUMPHREY. Edgar, you are a full-blood restricted Indian, are you not?

Mr. McCARTHY. Yes, sir.

Mr. HUMPHREY. How many full-blood Indians do you represent?

Mr. McCARTHY. We have got in that petition, I think, 130.

Mr. HUMPHREY. One hundred and thirty full bloods?

Mr. McCARTHY. Yes, sir.

Mr. HUMPHREY. The burden of your petition is to the effect that you want Congress to come down and personally investigate matters and explain the provisions of this bill to the Indians before they pass any legislation?

Mr. McCARTHY. That is what I want.

The commissioner has been asked about what I referred to a few minutes ago, this allotment act. We have six more years to run on that act. We had the chief ready to go to ask him about that six more years.

Senator CAMERON. Has that anything to do with this bill?

The INTERPRETER. Why, yes.

Senator CURTIS. No; that is the old allotment.

Senator CAMERON. That has nothing to do with this bill.

Senator CURTIS. Not this bill here.

The CHAIRMAN. What he wants is to amend it. I think we understand fully his position now and I do not see any use of repeating over and over again. I think I understand what he wants. If an amendment is offered to that effect the committee will consider it.

Have you anything else now to say?

Mr. McCARTHY. The reason for opposing this bill is we do not want to be under the same law as the Five Civilized Tribes are, as what Mr. Wright has referred to. The reason I am opposing this bill, I do not want this bill to become a law. We want the allotment act extended at the end of six years. That is what I am trying to explain to this committee. This is the particular thing that I am here for at this time, extending that allotment act. I do not want any other bill because I do not understand it.

The CHAIRMAN. This bill only deals with the distribution of the funds and there is no provision in the bill affecting the matter of extending the time at all. This bill has passed the House without any such provision in it and I do not think it is wise to take this particular matter up in connection with it. That will have to be dealt with by a separate bill.

Mr. McCARTHY. That is what I have been seeking to do. I have been trying to do that, but the House did not give me any attention nor the privilege of presenting anything in line with the wishes of the people. If that could be done at this time, I would be glad to present something of that kind.

The CHAIRMAN. There is nothing before this committee on that question at the present time.

Mr. McCARTHY. That is true enough. I want to make this explanation to you people so you would understand what my view is about this bill.

The CHAIRMAN. I think he had better get somebody to introduce another bill to that effect.

Mr. McCARTHY. That would do, if you are not going to act on this bill at this session of Congress.

The CHAIRMAN. If any Indian has anything else to say now on this bill, we would be glad to hear him.

(No response.)

The CHAIRMAN. Now, are you ready, Mr. Humphrey?

Mr. HUMPHREY. When I was here before, the understanding was that we would have a week or 10 days' notice of this hearing. I received notice only last Thursday morning that this hearing was set for to-day. We proceeded to get a mass of information, and have been working on it.

This CHAIRMAN. This meeting was set two weeks ago. Of course, it may be that some of the gentlemen did not get notice until you did.

Mr. HUMPHREY. I got my notice by mail, with a pink slip attached to some copies of the last hearing, last Thursday morning.

The fact that I want to present is this, that while we have a mass of information which was brought to us Saturday by attorneys and others, we have not digested that information sufficiently to present it to this committee in a proper form, and we are going to ask, if the chairman and the committee will permit, that we have a continuance for a couple of days, say to Thursday afternoon or morning, to present this matter.

Senator CURTIS. If you want this legislation passed, you ought to get your evidence in here to-morrow if you could.

Mr. HUMPHREY. As I said in my opening statement defining the issues some months ago, we do not feel that the guardianship question has ever been presented to a committee of Congress in its true light. The cases presented, in our judgment, do not properly reflect the guardianship question; and while we have a mass of information here we would like another day to work it out and present it in a proper manner to the committee.

The CHAIRMAN. Do you think you would save time by doing it?

Mr. HUMPHREY. I think so, yes. When we get to it, it will not take us more than two or three hours, or half a day, to present our testimony.

Senator CAMERON. If we are going to do anything with this bill at this time, we have got to get these hearings completed or we will not get a bill through the Senate.

The CHAIRMAN. It is possible that by postponing this hearing we might save some time.

Is there any possibility of agreeing on this legislation in any way?

Mr. HUMPHREY. I think we can, if we can be assured of what will be the final bill enacted into law.

The CHAIRMAN. On this probate question, Mr. Humphreys, at the very last session of this committee, introduced a lot of cases which these people had to go back and investigate, and they want to be heard on those cases.

Mr. BURKE. I understood they had agreed to a substitute bill, and so far as the department is concerned, recognizing the absolute importance of there being some legislation, we are quite content to let the bill that they have agreed to pass the Senate and put the matter into conference where anybody can appear and thresh out these questions. That would enable you to have a tribunal through which you could act speedily.

Mr. HUMPHREY. I only have this objection. I have sat on many conference committees with Mr. Burke where the conference committee has refused to hear anybody even Senators.

We feel that when we present the facts in their true light, that this committee is not going to have the general impression that seems to prevail in the East as to guardianship cases in Osage County, Okla.

Senator DILL. You want to have a guardianship system?

Mr. HUMPHREY. Yes.

Senator CAMERON. When can you get that information for the committee?

Mr. HUMPHREY. We would like to have until Thursday.

Mr. BURKE. My understanding was that this hearing was set for the 7th and then put over until the 13th.

The CHAIRMAN. It never was set for the 7th. There was another meeting for that date. If there is no objection, we will give them until Thursday. Try to be ready at that time.

Mr. HUMPHREY. Might I suggest that we are very anxious to have as full a membership of the committee present as possible. If it will add anything to have it held in the Capitol building, we will be very glad to have it there.

The CHAIRMAN. We will have it Thursday morning at 10 o'clock, in this room.

Now, personally I like the compromise bill much better than I do the Snyder bill, and if all parties are willing I should be glad to have that bill passed although it does not agree exactly with my ideas.

Mr. HUMPHREY. With some slight amendments, which I think we can agree to, I am in favor of that bill, too.

The CHAIRMAN. Please see if there is any way in which we can agree on that bill. I think it is a much more scientific bill and a better bill than this Snyder bill.

(Whereupon, at 11.30 o'clock p. m., the committee proceeded to the consideration of other business.)

OSAGE FUND RESTRICTIONS

THURSDAY, MAY 15, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 2.30 o'clock p. m., in the District of Columbia hearing room, the Capitol, Senator John W. Harreld (chairman) presiding.

Present: Senators Harreld (chairman), McNary, Cameron, Frazier Ashurst, Owen, and Wheeler.

Present also: Hon. Charles H. Burke, Commissioner of Indian Affairs; Hon. Edgar B. Meritt, Assistant Commissioner of Indian Affairs; Mr. J. George Wright, superintendent of the Osage Agency; Mr. J. M. Humphreys, probate attorney for the Osage Indians; Mr. Arthur Woodward, tribal attorney for the Osage Indians; and Mr. Paul N. Humphrey and Mr. Charles B. Wilson, jr., attorneys representing citizens of Osage County.

The CHAIRMAN. Now, I have a request from some Indians here who want to be heard—Shum-Kah-mol-la, McCarthy and Morrell. McCarthy has been heard.

Joe, have you a statement you want to make now? We will hear you now.

STATEMENT OF MR. JOE SHUM-KAH-MOL-LA.

Mr. SHUM-KAH-MOL-LA. Mr. Chairman and gentlemen of the committee, I wish to say a few words in regard to this bill pending before this committee. This bill, it seems, affects the restricted Indians. I am a restricted Indian myself. This bill affects me and the majority of the restricted Osage Indians.

The CHAIRMAN. Do I understand that you are appearing now especially for the restricted Indians?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

The CHAIRMAN. How many of them are there?

Mr. SHUM-KAH-MOL-LA. There are supposed to be about 250, I think.

The CHAIRMAN. Go ahead.

Mr. SHUM-KAH-MOL-LA. The majority of the restricted Indians are not favoring this bill because it gives what you call the competent Indian all their shares and restricts the restricted Indian to where it is impossible for him to get any money or to do anything that he could in the way of handling his own funds; and therefore we are opposing this bill at this time.

Now, there are two factions to the Osage people. One is what we call the competent Indian and one is the restricted Indian, so that

the restricted Indians are not in favor of this bill at this time. Therefore, I speak for the restricted Indians, the Osage Indians.

The CHAIRMAN. I want to call your attention to the fact that Mr. McCarthy filed yesterday with the committee a petition signed by 130 full-blood Indians. Are they the people you claim to represent?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

The CHAIRMAN. Do you know anything about this petition?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

The CHAIRMAN. What do you know about it?

Mr. SHUM-KAH-MOL-LA. I know the people are not wanting any legislation at this time until they can get a committee to come down there and investigate the affairs of the Osage people.

Senator WHEELER. Why are they not here to be heard?

Mr. SHUM-KAH-MOL-LA. Well, simply because they have not enough money to come up and present their objections to this bill.

Senator WHEELER. What do you mean by that? Why haven't they got the money?

Mr. SHUM-KAH-MOL-LA. It is simply because their money is tied up to where they only get enough to live on, and that money is not enough to use for any other purpose, only their living, and that is why.

Senator WHEELER. Have they ever asked the department to pay their expenses here to protest against this bill?

Mr. SHUM-KAH-MOL-LA. I do not know.

The CHAIRMAN. Go ahead.

Mr. SHUM-KAH-MOL-LA. I understand that there is a compromise bill that is pending before this committee. That is another bill that the restricted Indians do not know anything about.

The CHAIRMAN. Has it ever been submitted to them for their consideration at all?

Mr. SHUM-KAH-MOL-LA. No, sir. I do not think the bill has ever been presented to them for any consideration that I know anything about myself definitely.

The CHAIRMAN. Have you and your people had a chance to examine this bill we are taking testimony on now? Have you ever seen a copy of it?

Mr. SHUM-KAH-MOL-LA. We have, but they do not understand that. There is so much supervision on their property until they do not care much whether this bill ever becomes a law or not.

The CHAIRMAN. Do you think the Indians generally resist any restrictions on the use of this property at all? Is that right?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

The CHAIRMAN. Well, suppose that the Congress in its wisdom or unwisdom thinks it ought to be restricted, do you think that the provisions of this bill are unfair? Is that what you mean to say?

Mr. SHUM-KAH-MOL-LA. Well, it is unfair in a way where they have to be restricted where they could not do anything. They are penned up where they can not do anything, like, you might say, the wild animals we have at the Zoo in Washington, and it takes all the privileges away from the restricted people and does not allow them any privilege under this bill, and they can not contract for anything themselves without the supervision of the Secretary of the Interior and the Commissioner of Indian Affairs. Those things are the particular things the restricted Indians are opposing, and I myself oppose such legislation at this time.

The CHAIRMAN. Let me ask you a few questions. The Osages are divided into two general classes, one class not restricted and therefore getting all of their moneys, and the other class restricted and only getting a small portion of their moneys as they accumulate. This bill here does not affect the rights of the former class, the unrestricted Indians, does it?

Mr. SHUM-KAH-MOL-LA. No, sir.

The CHAIRMAN. It affects purely and simply the restricted Indians?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

The CHAIRMAN. Now, is there any representation of the unrestricted Indians in the Osage Council or not?

Mr. SHUM-KAH-MOL-LA. Well, I do not know.

The CHAIRMAN. Are there any members of the council that are unrestricted?

Mr. SHUM-KAH-MOL-LA. You mean on the council?

The CHAIRMAN. Yes.

Mr. SHUM-KAH-MOL-LA. There are.

The CHAIRMAN. How many?

Mr. SHUM-KAH-MOL-LA. About two or three, I suppose.

The CHAIRMAN. Out of how many in all on the council?

Mr. SHUM-KAH-MOL-LA. About 10.

The CHAIRMAN. Now, how do those two or three members of the council that are restricted feel about this legislation?

Mr. SHUM-KAH-MOL-LA. Well, I can speak for one, and he is not in favor of this bill, but it seems as though there are so many against them he can not get anywhere with what he wants.

The CHAIRMAN. Who is that, Edgar McCarthy?

Mr. SHUM-KAH-MOL-LA. No; Sam Barker. He is on the general council now.

The CHAIRMAN. Well, your position, as I understand it, is largely like that of some people who are proposing this bill. They claim that the general public has no interest in this bill, but you claim the unrestricted Indians have no interest in this bill. Is that it?

Mr. SHUM-KAH-MOL-LA. By rights we have interest, but it seems as though it takes the interest away from us where we can not do anything with it ourselves.

The CHAIRMAN. Does anybody else want to ask any questions?

Senator ASHURST. How much a quarter do you receive?

Mr. SHUM-KAH-MOL-LA. Under the present law, I just get \$1,000 a quarter.

Senator ASHURST. Every three months \$1,000?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. How many members are there in your family?

Mr. SHUM-KAH-MOL-LA. Just myself and wife.

Senator ASHURST. Your wife gets the same sum?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. Then you and your wife jointly get \$8,000 a year?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. You want a bill passed so you can get it all?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. You want to draw all the money; you are not satisfied with the \$8,000?

Mr. SHUM-KAH-MOL-LA. I think I am entitled to what is mine just as well as anybody else.

Senator ASHURST. But you are a restricted Indian, are you not?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. And you want that restriction removed so that you may receive and so that the members of your tribe may each and all get all that is coming to them instead of a part of it?

Mr. SHUM-KAH-MOL-LA. Not exactly that. In these hearings that we have been discussing about what we call the allotment act that has been approved by the act of Congress, and we lived according to that law up to 1921. We asked for an extension on that bill for 25 more years, but Congress or some one failed to give it to us and under that ground we are asking for more money. We think that what is known as the allotment bill ought to be continued. Under that act we were allowed more money; therefore, we ask for more money.

Senator ASHURST. Well, now, you are opposed to the idea of the Government taking a part of this money and investing it for you in a safe place at good interest? You are opposed to it, and want to draw all the money?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. Don't you think it would be a good thing for the restricted Indians to draw their \$1,000 every quarter, as you do, and let the Government continue to invest a part of this in safe securities at reasonable rates?

Mr. SHUM-KAH-MOL-LA. I think this investment ought to be made by the owner.

Senator ASHURST. That is a good doctrine, too.

Senator WHEELER. How long would it last you Indians if you had the use of it?

Mr. SHUM-KAH-MOL-LA. How long this money would last anybody if they paid it out to them?

Senator WHEELER. Yes.

Mr. SHUM-KAH-MOL-LA. Well, of course, they are not all alike. Some are pretty good and some poor, but the majority of the people ought to know by this time how to take care of anything.

Senator WHEELER. Do you think they do?

Mr. SHUM-KAH-MOL-LA. I think so.

Senator ASHURST. Now, Mr. Shum-Kah-mol-la, you have some other income besides the money the Government pays to you, rent from lands?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. It is considerable, is it not? You need not tell the amount. It is a considerable income?

Mr. SHUM-KAH-MOL-LA. It is in a way. It is according to customary rates.

Senator ASHURST. But it is a considerable income?

Mr. SHUM-KAH-MOL-LA. Well, I would not know what to call it. It is not large.

Senator ASHURST. I want you to understand that doubtless there are many restricted Indians who can handle their financial affairs as well as some other people, but we are here as trustees for the Indians. I want them to save their money and not squander it.

Now, take the Indians upon whom the restrictions have been removed, how have they done with their money? Have they made a success with the money turned over to them?

Mr. SHUM-KAH-MOL-LA. I do not think so, for the majority of them are under guardians at this time.

Senator ASHURST. Under the court?

Mr. SHUM-KAH-MOL-LA. Yes.

Senator ASHURST. Those Indians upon whom the restrictions have been removed have not made any striking success with money, and yet you think these restrictions ought to be removed. By that amendment you would get not \$8,000 a year, but the entire sum. If the Government is willing to act as your trustee for a while longer and invest your money in good securities at a fair interest, why is not that a good plan? Could you get better interest or better security?

Mr. SHUM-KAH-MOL-LA. It might be in a way, but the way I look at that and the majority look at it, we don't know the conditions of those investments and how long.

Senator ASHURST. You are entitled to know it. The Commissioner of Indian Affairs would tell you in a minute. Doubtless it is in Government bonds.

Mr. SHUM-KAH-MOL-LA. It is the way that our matters have been handled. It seems as though it is almost impossible for any one to have a say on the right of anything.

Senator WHEELER. What do you mean by that?

Mr. SHUM-KAH-MOL-LA. Such as making these investments.

Senator WHEELER. How do you mean?

Mr. SHUM-KAH-MOL-LA. They might some time—they would get away from a fellow.

Senator WHEELER. Get away from whom?

Mr. SHUM-KAH-MOL-LA. Any one, anywhere, wherever this money is invested.

Senator WHEELER. If they invest it in Government bonds, that ought to be all right.

Mr. SHUM-KAH-MOL-LA. That is all right, too, but, as I say, we have an act that has been established by our own people, what is known as the allotment act. We had a pretty fair and square money-saving matter in that bill, and I think if this money could be used for the Indians in that condition they would be more willing to have it that way.

Senator WHEELER. You do not think it would be a good thing to turn this money over to the Indians, do you?

Mr. SHUM-KAH-MOL-LA. Not exactly.

Senator WHEELER. If they turn it over to the Indians down there, would not they squander a lot of it and would not people come along and take it away from them?

Mr. SHUM-KAH-MOL-LA. Not exactly. I do not think they would be that easy to be controlled.

Senator WHEELER. Aren't there a lot of people down there who do not know how to handle their money very well?

Mr. SHUM-KAH-MOL-LA. Oh, yes; lots of people down there have not as much sense, I might say, as any human being.

Senator WHEELER. Of course, a lot of them have, but won't a lot of them be broke in a few years if they were given all the money?

Mr. SHUM-KAH-MOL-LA. That is according to the condition of the person himself.

Senator WHEELER. What do they object to? Do they object to the way their money is invested at the present time?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator WHEELER. What is their objection to the way the money is invested at the present time?

Mr. SHUM-KAH-MOL-LA. They are afraid if it was invested for them under such rules and regulations, it might be some time before they can ever see some of their money. They don't know when, and those are the things that are worrying the people at this time.

The CHAIRMAN. You mean by that that they want it to be easier to own cattle and hogs? Is that what you mean?

Mr. SHUM-KAH-MOL-LA. Yes.

Senator ASHURST. Mr. Shum-Kah-mol-la, I would not have you infer that I am in any way hostile to you people. I hope I am a friend, and I fully appreciate your natural desire and commendable desire to manage your own affairs. But, how much money did you draw between January 1, 1915, and December 31, 1920? You drew \$55,000, did you not?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. And how much did you owe when the Snyder Act took effect? You owed \$18,000, did you not?

Mr. SHUM-KAH-MOL-LA. Something like that.

Senator ASHURST. You spent \$55,000 and \$18,000, or \$73,000. Did you make investments in livestock?

Mr. SHUM-KAH-MOL-LA. I can explain to you that has been before this money—as much money as we were getting—we did not only get but \$40 a quarter, so we had to live on that and they took my annuity and my wife's annuity to keep up what I have got, and I also made investments such as cattle and hogs. That puts me back in debt, you might say, but when I was doing that I was planning to do this and later on pay up with what I could and then try to accumulate.

Senator WHEELER. How many automobiles did you buy?

Mr. SHUM-KAH-MOL-LA. At that time I did not buy any.

The CHAIRMAN. Did you lose any considerable sum on these investments that you made or not?

Mr. SHUM-KAH-MOL-LA. Well, not worth speaking of.

The CHAIRMAN. Did you lose any of it? Have you got the investments yet?

Mr. SHUM-KAH-MOL-LA. Well; yes, sir.

The CHAIRMAN. You have got the property yet?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. Well, don't you think this \$8,000 a year that you get and that is certain and sure would pay the interest and upkeep on these investments and let you live in a dignified manner besides? Why is that not enough?

Mr. SHUM-KAH-MOL-LA. Well, I think that is enough in accordance with the standpoint you take. It might be all right, but the property belongs to the Osage people and they think they ought to have their full title to it and use it in the way they see fit.

Senator WHEELER. What is it that they complain about? The way their money is invested?

Mr. SHUM-KAH-MOL-LA. Well, in a way—they don't specify in this bill how long this money is to be invested.

The CHAIRMAN. I don't suppose they really know how it is invested do they?

Mr. SHUM-KAH-MOL-LA. No; they do not.

Senator ASHURST. Now, Mr. Shum-Kah-mol-la, is it not a fact that although you and your fellow tribesmen who are restricted Indians are objecting to this bill, that it increases the payments and if it passes, instead of your family getting \$8,000 a year you are going to get \$12,000? In other words, you are going to receive \$6,000 a year and your wife is going to receive \$6,000 a year. Is that not a fact?

Mr. SHUM-KAH-MOL-LA. That is a fact, but there is so much supervision to that.

Senator ASHURST. I fully understand and appreciate your desire. I said before you are not to be blamed for your desire to be free to handle your own affairs. That is very natural; but, with \$1,000 a month for your family, and that is what you are going to get, you and your wife—and you have your investments—why can not you be content to allow the Government—and the most of this is in Liberty bonds for your own benefit, to continue this trust for a while?

Mr. SHUM-KAH-MOL-LA. That is the particular thing I am here for at this time, to take this bill or whatever it is that is pending here and discuss this matter with the ones that would be affected by this bill, not the ones that would get everything, all the shares and do as they pleased with it, but it seems as though there are people, what we call competent Indians, that are forcing influence on these Indians that they do not know anything about, and I think it is a wise thing and the wise plan to go and take this matter up with the people that would be affected by this bill and be more interested in this bill.

The CHAIRMAN. What do you mean by that?

Mr. SHUM-KAH-MOL-LA. I mean, take this matter up with the restricted Indians and not the competent Indians, because they get their full share and they can do as they please with what they get; but a restricted Indian does not understand these things, and they are the ones that are to be contended with.

The CHAIRMAN. What do you and your 139 petitioners really want us to do? Have you any request to make of the committee?

Mr. SHUM-KAH-MOL-LA. Well, not unless we take this matter up with those people that we represent.

The CHAIRMAN. What do you mean by taking it up with them? To go down there or have them come up here?

Mr. SHUM-KAH-MOL-LA. You can go down there and take it up with them or have them come here and explain for themselves just exactly what they want and how they want this bill to go, this bill to be explained to them thoroughly so that they will understand.

Senator FRAZIER. You want more time on it and don't want us to pass it now?

Mr. SHUM-KAH-MOL-LA. Yes, sir; if it takes until next fall, and we would know more about this bill.

The CHAIRMAN. You think they would be better satisfied if they had the bill explained to them by somebody?

Mr. SHUM-KAH-MOL-LA. Sure, if they were brought up here as a whole, just the restricted Indians, and explain this bill to them, and then they would have some idea as to what they want.

The CHAIRMAN. Do you mean to complain that these unrestricted members of the tribe are not explaining it to the restricted members?

Mr. SHUM-KAH-MOL-LA. Well, of course, I do not think that this bill has been understood by those people or explained to them by many of the people that are present at this time as a whole. I never knew of any meetings or gatherings that have ever been held to discuss this bill up to this time. And then, of course, their understanding is that there is some kind of a bill to be passed at the House and Senate, but they do not know whether that bill is a good plan for them or anything that would benefit them or if it is what they want; and I think that those people ought to be heard and this thing explained to them before any legislation is made at this time.

The CHAIRMAN. Anybody else want to ask any questions?

Mr. REYARD. Joe, how many signers of that application have no guardians, do you know?

Mr. SHUM-KAH-MOL-LA. No; I do not. Of course, I am not interested in that guardian proposition myself, nor are any one of these two other men that are with me, because we are not under guardians; therefore, we are asking more freedom. If we were under this guardianship or we had our competent papers, we would not appear before any committee.

Senator WHEELER. Are there a good many of the Indians down there that are under guardians?

Mr. SHUM-KAH-MOL-LA. Well, I suppose there are. I am not familiar with that guardian business.

The CHAIRMAN. In this petition you filed here, do you ask for time to present objections to this bill or not?

Mr. SHUM-KAH-MOL-LA. Well, we only ask for a joint committee to come down there and investigate conditions and the situation of the Osages at home.

The CHAIRMAN. The last paragraph of this petition reads:

Therefore, be it resolved, That the undersigned members of the Osage Tribe of Indians is not in favor of the passage of any legislation for the Osages until such time as a committee from Congress can come to the Osage country and investigate the true and real conditions for themselves, and at which investigation the members of the Osage Tribe may be permitted to appear and give their views to the committee without any intimation from others; and, we object to having a tribal council, whose members have certificates of competency, prepare legislation for we members who are without certificates of competency, as the members with certificates have no interest in our welfare.

That speaks the true sentiment of the people you represent, you think?

Mr. SHUM-KAH-MOL-LA. Yes, sir.

The CHAIRMAN. That is all.

Senator ASHURST. Now, you have 500 or 600 of your number, members of this tribe, that are restricted Indians? How many are there?

Mr. SHUM-KAH-MOL-LA. Well, I do not know.

Senator ASHURST. Now, then, all of your restricted Indians receive your money quarterly.

Mr. SHUM-KAH-MOL-LA. Yes, sir.

Senator ASHURST. And as a rule it is \$12,000 per person, is it not?

Mr. SHUM-KAH-MOL-LA. I do not know.

Senator ASHURST. And it is not \$12,000 per family. It is \$12,000 per capita—that is, per person. If a man has a wife and three children, he would get his \$12,000 and his wife and each child would get that?

Mr. SHUM-KAH-MOL-LA. You mean the competent Indian?

Senator ASHURST. Yes.

Mr. SHUM-KAH-MOL-LA. I suppose it is.

The CHAIRMAN. The unrestricted Indian gets everything that is due, but at the end of the quarter.

Mr. BURKE. Let me make this statement for the benefit of the Senators. Under the Osage act the money was paid out per capita to the members of the tribe that were enrolled in 1906, consisting of 2,229. On March 3, 1921, when the bill was pending to extend the mineral part of the act to 1926, an amendment was incorporated, which Mr. Snyder of the House was the author of, limiting the amount that would be paid after that date to the full-blood restricted class to \$1,000 a quarter for the adults and \$500 for the children, and the balance of their money is being retained. Now, under this bill—and this man does not know what is in this bill—it is proposed to liberalize that, because these restricted Indians have been complaining over the fact that they have been denied receiving their money, such as this man objects to any legislation that provides for restriction and says they want the restrictions removed and they want to have their money the same as the unrestricted class; and in addition to this per capita payment the survivors draw the money of the deceased members of the tribe that were enrolled in 1906, so that now 1,600 Indians receive the 2,229 shares, so you can see that in some instances they have 5, 6, 7, and 8 shares in a family. That means a big income.

The CHAIRMAN. That is true. In this connection I want to say it appears to me that these Indians did not know that that amendment was going to be put on the act of 1921 curtailing the amount of money they were to receive, and now they are afraid another bill is being passed which they do not understand.

Mr. SHUM-KAH-MOL-LA. I want to refresh Mr. Commissioner's memory as to what I said about the restrictions. I am not asking for the restrictions to be removed. That is not what I am talking about. But I want to say this, that if this bill is not satisfactory to the restricted Indians—just then he referred to that act of 1921. We thought at that time that we were getting a fair and square deal as to what we were asking for. We were asking for an extension of what we called the allotment act that has been approved by the act of Congress of March 28, 1906. Under that law we were asking for an extension not of the mineral rights but of the entire act. That is what the Osage people were asking for at that time. But, you see, we were overpowered by some one and they just extended the mineral rights, and then that is where all these things are coming in from. If this act was extended 25 more years, like the Indians asked for, these things would not have come up. That act would have been extended and the land and the money would all be under that act. I might say in addition to this that Commissioner Sells told us at that time that that act as a whole would pass and would continue for 25 years longer, and we see now that that is not done. So it is bringing in a lot of things that the majority of the restricted Indians that can not read nor write do not understand, and therefore we want this bill to be discussed with the restricted Indians so that they know what they are getting.

The CHAIRMAN. Any other questions?

That is all.

(Witness excused.)

The CHAIRMAN. Here is a letter that has been addressed to me by Mr. Kappler, who was formerly tribal attorney for the Osages, and it contains some very good information pertaining to Osage legislation. Without objection, I want to have it placed in the record. It is dated May 10, 1924. The gentleman seems to know a good deal about Indian legislation, so we will have it read.

Senator WHEELER (reading):

I have just concluded reading the hearings before your committee on bills S. 2065 and S. 2933, to modify the Osage fund restrictions, and for other purposes. On page 65 I note the following colloquy:

Mr. Woodward. * * * We contend on that account, that the Indian has a right to say how his money shall be expended, and ever since the passage of the act of 1912, which the Indians did not favor, the act which gives jurisdiction to the probate court in Oklahoma, the Indian was against it; he did not want it at all—

Senator FRAZIER. Why was it passed?

Mr. Woodward. I can not answer that question. I had nothing to do with it.

Senator FRAZIER. I would like to know who was back of the bill in putting it through.

Mr. Woodward. My recollection is that the bill was written by the local bar association and put through by the local bar association.

Senator FRAZIER. Of Oklahoma?

Mr. Woodward. Of Osage County. There may have been some reason for it at that time. There must have been some reason which the Congress considered good or they would not have passed that law.

This same question was asked at the hearings before the House Indian Committee in the Sixty-seventh Congress, on H. R. 10328, entitled a bill to amend the act of March 3, 1921, entitled "An act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes," and a similar answer was made, which would indicate that no one connected with Osage legislation has sufficient interest therein to investigate the facts.

On April 8, 1922, I wrote to Chairman Snyder of the House Indian Committee a letter explaining the reason for and the circumstances surrounding the passage of the act of April 18, 1912, and requested that same be printed in the hearings for the information of the committee and of Congress and of Government officials, but through an oversight it was omitted from the hearings as printed. As this information seems to be important to be considered in connection with the pending bill, I inclose a copy thereof and request that it be printed in the committee hearings as a part of this communication. After this letter has been read it will appear that the legislation of 1912 was enacted after much consideration by Congress, the department, the Osage Indians, and the tribal attorneys, of whom the writer was one.

That the act of April 18, 1912, was not improvidently passed and that it worked well will appear from the testimony of Superintendent Wright given in May, 1920, appearing in the hearings before the House Indian Committee on H. R. 5726, Sixty-eighth Congress, first session, page 103, as follows:

"Mr. ELSTON. It opens up a field of inquiry. How are those guardians appointed?"

"Mr. WRIGHT. By the local courts. We have a very good law here that is not applicable to the Five Tribes. The local courts here have jurisdiction of probate matters, but the department has authority to approve and to investigate any matters pertaining thereto, and we have a law clerk who gives that his attention. There is a check there.

"Mr. ELSTON. There is a double check by the court and also a check by the Indian Office.

"Mr. WRIGHT. Yes, sir; and it works very well.

"The CHAIRMAN. Which one of these checks prevail usually?

"Mr. WRIGHT. They both go together pretty well. I do not recall any case where the court has declined to follow the recommendation of our office.

* * * * *

"The CHAIRMAN. Your judgment of the matter usually prevails in these courts?"

"Mr. WRIGHT. Yes, sir."

This was the situation just previous to the passage of the act of March 3, 1921.

That no fault was found with the act of April 18, 1912, until after the passage of the act of 1921 appears by the testimony of Osage Tribal Attorney Woodward, found on page 199 of the same hearings, as follows:

"Mr. WOODWARD. Up until the passage of the act of 1921 the relations between the Agency and the county courts have been cordial, and I think it would be correct to state that in practically all cases they worked in harmony; but after the passage of the act of 1921, those relations have not been so harmonious."

In my humble opinion this states the whole case. The trouble is not with the law but with the administration of it, as succinctly stated by Congressman Garber on page 178 of the House Hearings on H. R. 5726, supra, and it would also appear that even the administration of the law was satisfactory from 1912 to the date of the passage of the act of 1921.

That no fault was found with the act of April 18, 1912, until after the act of 1921 was passed (and it may be taken for granted that had fault been found it would have been remedied in the act of 1921) is further shown by the statement of Tribal Attorney Woodward before your committee in the hearings on S. 2065 and S. 2933, March 28-29, April 1, 1924, page 185, where he says not a large number of guardianships were authorized by the courts prior to 1921, and that much of the work of supervising guardianship matters of Osage allottees as directed by the act of April 18, 1912, and which act made it "the duty of the Secretary of the Interior to report irregularities to the county court and take the necessary steps to have such cases fully investigated and also to prosecute any remedy, either civil or criminal as the exigencies of the case and the preservation and protection of the interests of the allottee or his estate may require," was attended to by a mere clerk as a side issue to other duties performed at the Agency—all going to show that the act of 1912 was found not to be blameable for anything arising prior to the passage of the act of 1921. It therefore took nine years after the passage of the act of 1912 to discover any defect in the act of 1912 as framed by Kappler & Merillat as attorneys for the Osage Indians, with the approval of the Secretary of the Interior, the Commissioner of Indian Affairs, the tribal council, the Oklahoma delegation in Congress, both Committees on Indian Affairs, and a large number of reputable citizens of Osage County, Okla.

From the evidence and testimony submitted, it would appear that it was the act of March 3, 1921, and not the act of April 18, 1912, that has caused whatever trouble experienced in carrying out the will of Congress.

As one of the attorneys for the Osage Indians at the time the act of April 18, 1912, was passed, it seems meet that I should attest to the facts in the case and not permit unwarranted statements to go unanswered.

Respectfully yours,

CHARLES J. KAPPLER.

Mr. BURKE. Mr. Chairman, on the part of the bureau I hope the committee will not be influenced by this letter, which is purely an argument, without it at least appearing under what circumstances this argument is submitted here by a Washington attorney. Let us know whom he represents and whether this is a voluntary contribution or whether he has been retained by somebody to make an argument.

The CHAIRMAN. All I know is that this letter was brought to my office and left there with a little note written in pencil and reading as follows:

DEAR SENATOR: I hope you will see this statement gets into the hearing on May 13—

KAPPLER.

Inasmuch as this bill contains a very material change in the law as it was in 1912, I think it is very pertinent.

Mr. BURKE. Let me call your attention to the fact that the act of March 3, 1921, materially changed the conditions of the Osages because you began then retaining large sums of money from the restricted class and it increased the demand for the appointment of guardians.

The CHAIRMAN. I understand this is the statement of the former tribal attorney that this probate law worked perfectly up to that time.

Mr. BURKE. The conditions have materially changed, and here is a voluntary contribution from a lawyer who appears to have no interest in this case. I do not think we ought to consider anything that is submitted without knowing how it comes in.

The CHAIRMAN. I have explained the circumstances. If you want to call Mr. Kappler, we will have him as a witness. The material question here is whether the probate procedure shall be changed. It is very important to this committee to know how that probate law is working, and here is a man who quotes your own superintendent who says it worked perfectly until 1921. I think it is very pertinent to the issues.

Mr. BURKE. There is a great deal in the hearings as to how it has worked since March 3, 1921.

The CHAIRMAN. I understand that that is true, but I think that this is a link in the chain. If anybody wants to call Mr. Kappler, I will be glad to do it.

Mr. BURKE. I will, if that letter is going to receive consideration at the hands of the committee.

The CHAIRMAN. I thought putting it in would save time and space, and if the committee allows it to go in Mr. Kappler can be called later and cross-examined on it; but I think the committee ought to know how this law works, not as to amount but how it works as a piece of machinery. Personally I think it works all right.

Now, there is another full blood that wants to be heard.

STATEMENT OF MR. ROBERT MORRELL

The CHAIRMAN. I am very anxious to get the exact sentiments of these full blood Indians, because they are affected by this legislation.

Mr. MORRELL. Gentlemen, I would like to make a statement in regard to the compromise bill, the compromise bill that is before the committee now. We are the people that are speaking for the restricted Indians, and this compromise bill is a thing that our people do not know anything about and, besides, whoever composed this compromise bill never suggested and explained it to the people and it was not carried to the people.

The Snyder bill is the bill that our people have been opposing through the House, too, and at the present time, for our part—we are speaking for these people—I believe it is a proper matter to let the people know something about this compromise bill.

Senator WHEELER. You are afraid somebody is slipping something over on you that you do not know about?

Mr. MORRELL. Yes. Then, besides there, is to be another election for the tribe, and I think it is about on the 19th that candidates for the election—

The CHAIRMAN (interposing). You mean you are to have an election of the council?

Mr. MORRELL. Yes, sir.

The CHAIRMAN. When?

Mr. MORRELL. For the chief. The nomination comes on the 19th, I think, and then the election on June 2.

The CHAIRMAN. And you wanted this passed over until the new council is elected?

Mr. MORRELL. I would like to see this compromise bill considered by the people, and then in the meantime this thing is coming on. It is two matters that the people have to go over, this election and the compromise bill.

Senator WHEELER. What has the election got to do with the bill at the present time?

Mr. MORRELL. About the representation. We have the people here the chief and the council, that are supposed to represent the tribe.

Senator WHEELER. You say he is supposed to represent the tribe. Do you think he does represent the tribe?

Mr. MORRELL. They are supposed to represent the tribe, but they are not representing the wishes of the people.

Senator WHEELER. Who are they representing?

Mr. MORRELL. It is our belief that they are representing the Indian Bureau.

Senator WHEELER. Just representing the Indian Bureau?

Mr. MORRELL. Yes, sir. What I want to say—

Senator WHEELER (interposing). What you are trying to do is to elect somebody that will represent the Indians?

Mr. MORRELL. Represent the wishes of the people and at this time that is all I would ask of the committee, that you give the people time to consider this, and if the committee will delay this matter to the next term, then there would be time enough for the people to decide what to do about the Indian affairs.

Senator WHEELER. Well, then, what you mean is that you want to have your council take it up and discuss it and find out what kind of a bill they want passed?

Mr. MORRELL. Yes, and also if the restricted Indians could get in their wishes on this compromise bill, then they would know what they are doing.

Senator OWEN. You want a joint committee to go down and investigate the affairs of the Indians before this bill is passed?

Mr. MORRELL. Before this bill is passed. That is the petition that we presented to this committee.

The CHAIRMAN. You don't care whether it is joint committee, just so it is a committee?

Mr. MORRELL. The committee that is considering the bill now.

Senator OWEN. Have copies of this bill been shown to your people? Have they had a chance to see it and read it?

Mr. MORRELL. Which copy?

Senator OWEN. The bill that is pending here, that passed the House.

Mr. MORRELL. Well, I suppose—I went over it myself, but there are the full bloods, you know, that can not read and write, and I do not know anybody that would be patient to explain it to them.

Then, about urging these people, the petition itself there says that they don't want any legislation at this time. Well, now, people that are present and the people that are representatives of different parts of the community seem to want to push this bill through which, it seems to me, ought not to be urging this bill. What I mean by that, for instance, is that the commissioner here wants to push this

thing through, I suppose, and, of course, he has charge and entire control of the affairs and all that, you know. I feel that anybody else would urge this thing if he is not affected by this bill here.

The CHAIRMAN. You mean by that, you seem to think that the people who are pressing this bill are not affected by it?

Mr. MORRELL. Yes. Now, for instance, the commissioner here has charge of Indian affairs and controls these Indian affairs.

Senator FRAZIER. On the other hand, you say the ones that this bill affect do not know what it means?

Mr. MORRELL. Yes.

Senator FRAZIER. You want more time so they can have conferences and find out what it means?

Mr. MORRELL. Yes.

The CHAIRMAN. Well, that applies also to those unrestricted Indians. They are not affected by this bill, are they, particularly?

Mr. MORRELL. The competent people?

The CHAIRMAN. Yes.

Mr. MORRELL. Well, half way, not.

The CHAIRMAN. Is there anything else you want to say?

Mr. MORRELL. I believe that is all I want to say in the hearing.

The CHAIRMAN. Does anybody else want to ask him any questions?

Mr. BURKE. How many are there on your council in the Osage tribe?

Mr. MORRELL. How many?

Mr. BURKE. Yes.

Mr. MORRELL. Eight, I think.

Mr. BURKE. How were they elected?

Mr. MORRELL. They were elected by the people.

Mr. BURKE. How many of them are full-blood Indians?

Mr. MORRELL. On the council?

Mr. BURKE. Yes.

Mr. MORRELL. I suppose there would be four, I think.

Mr. BURKE. Are there not five?

Mr. MORRELL. Yes.

Mr. BURKE. How many of them are under restriction?

Mr. MORRELL. Two council men.

Mr. BURKE. The rest of them are restricted?

Mr. MORRELL. Restricted. I mean they are competent.

Mr. BURKE. There are only two that have certificates of competence?

Mr. MORRELL. There are two that are restricted.

Mr. BURKE. There is only one councilman who has a certificate of competence; the others are restricted Indians, are they not, full bloods?

Mr. MORRELL. There are three that are restricted Indians. There are two.

Mr. BURKE. There are three. Now, they had a council in 1921, did they not?

Mr. MORRELL. Yes, sir.

Mr. BURKE. In 1922 you had an election?

Mr. MORRELL. Yes, sir.

Mr. BURKE. Elected a new council?

Mr. MORRELL. Yes, sir.

Mr. BURKE. Isn't it a fact that the council that existed before the election of 1922 came to Washington with reference to this legislation? You know whether they did or not?

Mr. MORRELL. I suppose they did.

Mr. BURKE. Hasn't the present council been up here repeatedly, several times, urging this legislation?

Mr. MORRELL. Yes, sir.

Mr. BURKE. Then it has the indorsement of the council of the Osage Tribe?

Mr. MORRELL. Yes, sir.

Mr. BURKE. And also the previous council?

Mr. MORRELL. I guess. Commissioner, on that I don't like to make any argument, but there have been two factions of people, as Mr. Shum-Kah-mol-la stated a while ago, and it is so.

Mr. BURKE. Let me ask you another question.

The CHAIRMAN. Let him finish his statement.

Mr. MORRELL. And by getting the people to run the Osage affairs—there are more people on one of the factions, what are known as half breeds, and in addition to that are these competent Indians. There are more of them than the restricted Indians. There is a majority of them, and they outvote the restricted Indians on the tribal council. It has been carried on from time to time. You referred back to 1921; that was the start of that. There have been more half breeds and besides the competent people outvoted the restricted Indians in 1921.

The CHAIRMAN. What do you mean to say, that they outvote you and always control the council?

Mr. MORRELL. Yes, sir.

The CHAIRMAN. Are they always dominated by the bureau? You said they were a while ago. Is that true or not?

Mr. MORRELL. In this election, they are the men to say who they wish to vote for, I suppose. That is the way I have been looking at it. I believe the restricted Indians could not get anywhere.

The CHAIRMAN. Since they get everything they want and all the money they want and all they are entitled to, it is perfectly natural they would not be in conflict with the bureau about the matter. Isn't that true?

Mr. MORRELL. Well, what has been referred to in the hearings about 1906, as Mr. Shum-Kah-mol-la stated this morning—if that whole act was extended, well, I do not believe there would be any argument about anything in this committee.

Mr. BURKE. In other words, if the restricted Indians get all their money, they would be entirely satisfied?

Mr. MORRELL. In a way.

The CHAIRMAN. On the other hand, all those that get all their money are not complaining about anything.

Mr. BURKE. Let me ask you if you know of any instance in the last four years wherein the Indian Bureau has in any way affected the election of the Osage council or taken any part in it in any way.

Mr. MORRELL. To answer that, I would have to go back to the old act.

Mr. BURKE. I am not talking about 1906. I am talking about the election of your council two years ago. Did the Indian Bureau in any way affect your election?

Mr. MORRELL. No.

Mr. BURKE. And you elected a full-blood principal chief, didn't you?

Mr. MORRELL. In 1921?

Mr. BURKE. 1922. The man who is now dead.

Mr. MORRELL. Yes, sir.

Mr. BURKE. And all but three members of the council were full bloods?

Mr. MORRELL. At that time?

Mr. BURKE. Yes.

Mr. MORRELL. I do not know.

Mr. BURKE. That is all.

The CHAIRMAN. What I want to know is, how many of the present council are unrestricted and how many are restricted?

Mr. BURKE. This memorandum that I have here shows that of the tribal council they are all full bloods but three, and two have certificates of competency. Now, out of the entire council the three mixed bloods are those that have certificates of competency, and one of the full bloods has a certificate of competency, so four of them are restricted and four are unrestricted.

The CHAIRMAN. In other words, there are four of them that are getting all their money and four that are only getting part of it?

Mr. BURKE. Now, the fact is, if I may be permitted to make this statement, that the Indians, possibly all of them, whose money is being under the Snyder Act conserved by the Government, are opposed to that legislation, and I may say that everybody that lives in the vicinity of where these Indians reside are also opposed to it.

Senator FRAZIER. To the present bill, you mean?

Mr. BURKE. No, sir; to the restrictions under the Snyder Act. The objection that comes from Indians to this bill, which liberalizes and gives them more money than the Snyder Act, is that they hope, and somebody assures them, that if there is no legislation liberalizing the Snyder Act it may be repealed and they will get all their money. Now, that is the situation.

Senator WHEELER. What have you got to say about that?

Mr. MORRELL. About what the Commissioner said?

Senator WHEELER. Yes.

Mr. MORRELL. In case this bill should fail, then they would go back and repeal the old act?

Mr. BURKE. Repeal the Snyder Act, the Act of March 3, 1921.

Mr. MORRELL. Why, that Snyder bill is the bill that the people oppose, such as investments, the remainder to be invested in Government bonds, and from my point, who is it going to benefit? Who is it that this bill means to benefit, my children or the people living at the present time? That is something that the people at home can not understand yet. I have stated that.

The CHAIRMAN. Do you understand that if this bill fails, that they will continue under the bill of 1921?

Mr. MORRELL. What is that?

The CHAIRMAN. If this bill were not passed, do you understand that they would continue to administer your affairs under the act of 1921?

Mr. MORRELL. What you mean by that, it will continue like we are before this bill is up?

The CHAIRMAN. Yes. You understand that you would not go back to the 1906 act if this bill is not passed?

Senator WHEELER. You would still be under the Snyder Act.

The CHAIRMAN. Do you understand that?

Mr. MORRELL. I do not believe I am clear.

The CHAIRMAN. Mr. Burke said that you folks were opposing this bill because you thought that if this bill were not passed you would go back to the 1906 act. As a matter of fact, you would go back to the 1921 act, the present act, the one that is in effect right now. Do you understand that? His point is that this act is more liberal to you and those you represent than the act of 1921, but I understand you are opposed to it in spite of the fact that it is more liberal. Is that right?

Mr. MORRELL. In a way; yes, sir.

Senator CAMERON. What do you want? Do you want this bill not enacted into law, and the Snyder Act repealed, and go back to the act of 1906?

Mr. MORRELL. We want what is known as the compromise bill, we want it understood by our people.

Senator CAMERON. You want it understood before it is changed?

Mr. BURKE. For the benefit of the committee, I would like to state that this man and his wife from January 1, 1915, to December 31, 1920, received \$68,662.27, and upon the passage of the Snyder Act they were in debt to the extent of \$2,715. He now gets only \$8,000 a year under the Snyder Act, and you can readily see why he would like to have the 1906 law restored so that he could get all his money.

The CHAIRMAN. I have never heard him say yet he wanted the 1906 law. That is what I want to find out. Do you mean that is what you want, to go back to the 1906 law so you can get all your money? I understand they all want to do that, but that does not necessarily mean they might not have some special objection to this legislation.

Senator CAMERON. If we do not pass some new legislation they will be living under the present Snyder Act, will they not?

The CHAIRMAN. It is not a bad law. I will say that to you.

Senator CAMERON. They seem to be all objecting to it.

The CHAIRMAN. Go ahead, if you have anything more to say.

Mr. MORRELL. I believe that is all I want to say.

Senator OWEN. What are the balances that are due to the restricted Indians? Is there a considerable amount?

Mr. BURKE. That would depend on how many shares they have.

Senator OWEN. One share, I mean.

Mr. BURKE. One share last year—there would be conserved and invested for the Indian about \$8,400.

Senator OWEN. How is that invested?

Mr. BURKE. Mostly in Government bonds or deposited in designated bank depositories.

Senator OWEN. Have not the bonding companies withdrawn to some extent from that section during the last year or so?

Mr. BURKE. They are getting much more conservative. Some companies may have, but they are very much less inclined to furnish bonds than they were up to the last year. In other words, we have been unable to deposit the Osage moneys that we have for investment in the banks of Oklahoma as the law requires if it is deposited in banks, because not enough banks can qualify as depositories; therefore, we have been investing in United States Government bonds.

Senator OWEN. They can not qualify unless they give these bonds?

Mr. BURKE. They have to give a surety bond. We have put ten millions of dollars in more than three hundred banks, and the deposits are limited to the capital of the bank; and so we have a surplus now of several millions in the last year. Since this act of March 3, 1921, that surplus is piling up to quite a large fund.

Senator OWEN. Does the law require this bond as a surety of these funds? It does not require a surety bond?

Mr. BURKE. It requires some security to the department.

Senator OWEN. And the Indian Office has found it advisable to require a bond from the bonding companies?

Mr. BURKE. With reference to the deposits, we require a surety bond from a company that is certified by the Secretary of the Treasury; so that we do not take local companies that may be in the several States.

Senator OWEN. The department never takes as security commercial paper or anything of that sort, does it?

Mr. BURKE. No, sir.

Senator OWEN. That would be too difficult of administration; is that the reason?

Mr. BURKE. It would be precarious, and they claim that not a dollar has yet been lost in the deposits of these funds in banks. So far we have been protected.

The CHAIRMAN. The department seems to be very anxious for some sort of legislation along this line. What are the defects in the 1921 act that you want to correct?

Mr. BURKE. Senator, let me say—I am speaking now for the Bureau of Indian Affairs, which probably means the department—my only concern about this legislation has been in response to the Osage Indians who have repeatedly been coming to Washington since I have been commissioner and objecting to the Snyder Act of March 3, 1921.

The CHAIRMAN. In what particulars?

Mr. BURKE. Because that limited the money that they could receive to \$4,000 a year for adults and \$2,000 a year for their children. The first council that came up here came for the purpose of trying to secure a repeal of the act of March 3, 1921, known as the Snyder Act, and after they conferred with the committees of Congress and with the department, they realized that it would be useless to try to secure the repeal of the Snyder Act and that the best that they could hope for would be some compromise; and so this bill has been worked out. I am talking now about the bill that refers to their funds, not the probate or guardian part of it.

Now, there are Indians such as this man over here, who was testifying here the other day, who admitted to me at least in a hearing that what he was trying to accomplish was to get no legislation in the hope that they could have the Snyder Act repealed and get their money as they got it before that act was passed.

The CHAIRMAN. Well, I think that has been explained to them, that that is hopeless. But, aside from the fact that you in this bill increase the quarterly payments to the restricted Indians, which everybody is in favor of, why is it that they try to ring in some other things in this bill to which the people object?

Mr. BURKE. That is another question that they discussed, that they are under a system where they are compelled to pay very large

expenses of administration where guardians are appointed, and they feel they ought not to pay the expenses of some of these cases. I think the committee has had a good deal of detailed information as to just what it is costing and how much has been paid out for administrative purposes through the courts as compared with the cost of the entire administration of their affairs under the Government.

The CHAIRMAN. Yes; but there are two sides to that question, and the other side has yet to be presented. These Indians, of course, have all been impressed with the importance of this legislation because it gives them more money, but in spite of the fact that it gives them more money they are offering objections to other features of this bill.

Mr. BURKE. Mr. Chairman, it is costing at the present time for guardianship proceedings somewhere in the neighborhood of \$300,000 or \$400,000 a year.

The CHAIRMAN. That comes out of each individual estate. The other side of that question has not been heard yet.

Mr. BURKE. The Indians say they do not think they ought to pay that expense.

Senator OWEN. How many of those guardians are there, Mr. Commissioner?

Mr. BURKE. Four hundred and thirty.

Senator OWEN. Why so large a number?

Mr. BURKE. Since the accumulation, these payments have been increasing, and there is apparently an attractive proposition in having these guardians appointed so that the guardians can handle that fund for the Indians; and the Indian also gets the impression that if he gets a guardian he can get more money than he can under Government restriction. He does get more, Mr. Woodward says.

The CHAIRMAN. How does he, when you have a probate attorney to O. K. every cent?

Mr. BURKE. He does not.

The CHAIRMAN. The proof here is that the probate attorney never allows anything to be spent unless it has his O. K.

Mr. BURKE. There is no evidence in the record to that effect.

The CHAIRMAN. If there is not, I understand that there will be. Well, as a matter of fact, I just wanted to know.

Mr. BURKE. Another thing that ought to be done if you are going to restrict the payments of these Indians, they ought not to be permitted to contract debts except with the permission of the department, because otherwise you might as well remove the restriction.

The CHAIRMAN. Personally, I am in favor of that provision of this act which gives an increased amount to be paid to the restricted Indians, but I am opposed to changing the probate system in that vicinity. I think the one is a check on the other. It is an evolution of 16 years in that State and it has been established. The objection I have to this is where it seeks to take away from the probate courts the jurisdiction which they have gotten and which is proving to be very successful. Personally, I am not in favor of that provision that seeks to do away with the jurisdiction of the courts.

Mr. BURKE. Mr. Chairman, we feel, and I think I made that clear to the chairman in private conversation, that there ought to be some legislation. In justice to the Indians there ought to be some legislation, and the House of Representatives has passed a bill and sent it

over here and it is now before this committee, and this committee can eliminate from the House bill such provisions as this committee may think ought not to be enacted and let the bill get into conference and let us get some legislation.

The CHAIRMAN. Unfortunately, the conference is stacked against the probate courts.

Mr. BURKE. I understood the other day, when this hearing was postponed, that certain attorneys representing the bar association of Pawhuska were to be here to-day and that they were to be heard.

The CHAIRMAN. These full bloods asked to be heard and I agreed that they should be heard, because I think we ought to know the viewpoint of the full bloods.

Is that all the witnesses you have got, Joe?

STATEMENT OF JOE SHUM-KAH-MOL-LA—Resumed

Mr. SHUM-KAH-MOL-LA. I would like to say to this committee at this time that you all know that any kind of a language is pretty hard to translate into another, and therefore it is pretty hard for any one to present the view in an outline to the people to get everybody's wishes; that is, of any Indians. I want to say also that it seems as though we have no attorney to speak for us to submit our wishes, and therefore we want a fair and square deal before the committee undertakes to put through any legislation at this session.

As to what Mr. Commissioner referred to, about the election of 1922, the Osages went and nominated an old man who was pretty feeble and they elected him for chief. He was a full-blood restricted Indian, and he is an old timer, too. He opposed this legislation of this kind, or any bill, so that the Osages can't do anything and they can't contract for any debts or anything. He thought it was a wise thing for the Indian to get what was really coming to him and enjoy what he has coming to him here on this earth during his lifetime, and when he is dead and gone he has nothing to take with him.

The CHAIRMAN. He is a long time dead.

Mr. SHUM-KAH-MOL-LA. Yes.

The CHAIRMAN. We understand that viewpoint.

Mr. SHUM-KAH-MOL-LA. The reason I make this additional statement is, I want this committee to understand that it is pretty hard for us people to speak the English language correctly, and therefore it might be that we can not express our views to the committee here in just the exact way that we want. We might not use the language properly, but, as Mr. Morrell says, there is some one opposing anything we undertake to do all along. As Mr. Commissioner has referred to about the Indians coming up here for legislation, they come up here and ask for legislation, but there is a way of abolishing all that they have to say. If they ask for anything, they would tell him, "No, sir; if you go before the commissioner or go before the chairman of the House committee and present such talk as that, such a resolution, you will not get nowhere."

The CHAIRMAN. You think, they are afraid to express their real wishes?

Mr. SHUM-KAH-MOL-LA. They are absolutely scared.

The CHAIRMAN. They can express them here.

Mr. SHUM-KAH-MOL-LA. I will thank you for it.

Mr. BURKE. You say you have not any attorneys?

Mr. SHUM-KAH-MOL-LA. Not exactly, to represent the wishes of the restricted Indians.

Mr. BURKE. You have been consulting attorneys from Pawhuska as to what you were going to testify to before this committee.

Mr. SHUM-KAH-MOL-LA. Well, now——

Mr. BURKE (interposing). Have you?

Mr. SHUM-KAH-MOL-LA. I have only asked them what way I could come up here and present my views.

Mr. BURKE. You have talked with these attorneys that are here.

Mr. SHUM-KAH-MOL-LA. Not in favor of their wants.

Mr. BURKE. You have talked with them, haven't you?

Mr. SHUM-KAH-MOL-LA. I have talked with them in friendly terms; and then, we feel that this money proposition belongs to us. This wealth belongs to the Osage people and they want to have a fair and square hearing, so that anything that is presented to the committee——

The CHAIRMAN (interposing). Don't you think that these attorneys who represent the business interests of the community have the same right to appear here in this matter that the unrestricted Indians has a right to appear and oppose you restricted Indians?

Mr. SHUM-KAH-MOL-LA. All along we have never been able to present any of our wishes just the way we want.

The CHAIRMAN. We will hear all of you.

Does anybody else want to be heard?

STATEMENT OF MR. EDGAR McCARTHY—Resumed.

Mr. McCARTHY. I want to say something else in regard to this. I would like to show you this paper here. I do not want to file it; I want you to see it. That is one thing the Osage Indians fear, about this money being invested and loaned out to different banks of the State. One of the councilmen, Sam Barker—he is a member of the council—he handed this to me.

The CHAIRMAN. Let me see it.

Mr. McCARTHY. And he is opposed to this legislation.

The CHAIRMAN. What is he in favor of?

Mr. McCARTHY. Well, he favors the restricted Indian.

The CHAIRMAN. What is this, anyway?

Mr. McCARTHY. Well, that is a statement of the different banks.

The CHAIRMAN. That have failed?

Mr. McCARTHY. Yes, sir.

The CHAIRMAN. Were there Indian funds deposited in each of these State banks?

Mr. McCARTHY. Yes, sir.

The CHAIRMAN. You heard Mr. Burke's statement that this is all secured by bonds, and that there had not been any losses in money?

Mr. McCARTHY. You know, Sam Barker got that from the council.

The CHAIRMAN. This shows that there was deposited in failed banks the sum of \$183,405.50.

Senator OWEN. The commissioner has that covered by bonds.

Mr. Burke, you have not lost a cent of money?

Mr. BURKE. Not at all.

You are the Indian that I thought talked like a politician?

Mr. McCARTHY. Yes.

Mr. BURKE. You are running for a political job?

Mr. McCARTHY. I used to.

Mr. BURKE. Are you a candidate now?

Mr. McCARTHY. Well, I don't know; it may be.

The CHAIRMAN. Edgar, have you anything else?

Mr. McCARTHY. There is another thing. The Osage Indians don't understand—they are opposed to this bill; they don't want this legislation passed at this time. They don't want it at all, because this legislation is not for the Osage Indian.

The CHAIRMAN. You said that yesterday, didn't you?

Mr. McCARTHY. I did say that yesterday.

The CHAIRMAN. I don't want you to repeat.

Mr. McCARTHY. Because this legislation is the invention of some one other than the Osage Indians, that is the reason the Osage people do not want it. Now, there is another bill. There is another clause in this bill we kind of fear, that is, that the money is set aside for the agent's use. The agent uses it for a purpose, appropriated, I think, \$150,000 last year, and I do not know how many dollars they used this year. If this act should pass, he might have two dozen more clerks and then appropriate some more money, and we have to furnish the house and have to buy an automobile and one thing or another. We do not want to spend any more money to the other people than we are. We want our money to use any way we see fit.

The CHAIRMAN. We understand you.

We will now adjourn until tomorrow at 2:30.

(Whereupon, at 5 o'clock p. m., the committee adjourned until Friday, May 16, 1924, at 2.30 o'clock p. m.)

OSAGE FUND RESTRICTIONS

FRIDAY, MAY 16, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 2.30 o'clock p. m. in the Committee on Commerce hearing room, the Capitol, Senator John W. Harreld (chairman) presiding.

Present: Senators Harreld (chairman), Cameron, Frazier, Ashurst, Owen, Kendrick, and Dill.

Present also: Hon. Charles H. Burke, Commissioner of Indian Affairs; Mr. J. George Wright, superintendent of the Osage Agency; Mr. J. N. Humphreys, probate attorney for the Osage Indians; Mr. Arthur Woodward, tribal attorney for the Osage Indians; and Mr. Paul N. Humphrey and Mr. Charles B. Wilson, jr., attorneys representing citizens of Osage County.

The CHAIRMAN. Now, Mr. Humphrey, we are ready to have you begin.

MR. HUMPHREY. Mr. Wilson will make our statement.

MR. WOODWARD. Mr. Chairman, the chief and the members of the council who are here are leaving today for Oklahoma. They have to be home by Monday, and the chief would like to make a very brief statement before he goes.

The CHAIRMAN. All right; we will hear him.

STATEMENT OF CHIEF RED EAGLE.

Chief RED EAGLE (through interpreter). Mr. Chairman, I came up here with part of my council with regard to the bill introduced here. We came up here last winter. I came last January and had a bill introduced here. It did not pass the House, and Mr. Commissioner and Mr. Secretary came down to our country and had a talk with us and told us to go among our tribe and talk the things over before we do anything with the bill. This time we have not got together yet.

I and my council have been complying with the laws passed by Congress. I came up here this time to have this bill passed by you gentlemen, because we want it for our people and the children also. We do not want these people of our county to have this influence over us. It is our duty to look after our affairs, and that is what we came here for.

Yesterday Mr. Shum-Kah-mol-la made a statement in regard to the bill here. At the time the March 3, 1921, bill passed, he was in the council. After that, they did not want the 1921 bill. He said at the time he was in the council that he had this bill passed, of March 3, 1921.

We have some amendment to introduce to the bill. We would like to have our bill passed if we could. That is what we came here for. I am going home today, I think.

Yesterday, Mr. Chairman, you read a letter from an attorney. We removed him some years ago. He has got no power of attorney from the Osages.

The CHAIRMAN. He did not claim to have any power of attorney at the present time. He claimed to be attorney at the time the act was passed in 1912.

Chief RED EAGLE. We have an attorney, Mr. Woodward, here to look after our affairs. I wish you would consider the bill thoroughly, because it would be to the benefit of the Osage Tribe.

I do not think anybody on the committee has any desire except to do that which is best for the Indian, first and always. We differ in our opinion as to what is best for the Indians.

That is all I want to say.

STATEMENT OF MR. CHARLES B. WILSON, JR., REPRESENTING CITIZENS OF OSAGE COUNTY

MR. WILSON. Mr. Chairman and gentlemen of the committee, Mr. Humphrey, Mr. McCoy, and myself are here purely on behalf and as representatives of the white business interests of Osage County. With reference to these purely tribal matters, we have no concern. We have no commission nor authority to represent any Indian or set of Indians, but in appearing here we do so to call the attention of this committee to certain matters which bear upon the business interests and prosperity of Osage County and vicinity. That is closely connected with what is commonly referred to as the guardianship proposition, and hinges around whether or not these incompetent Indians who are incompetent of managing their own affairs under the State laws of the State of Oklahoma should be looked after and their financial interests cared for entirely by representatives of the Indian Department or whether that duty should be delegated by act of Congress and by acts of the courts of the various counties of the State to guardians.

There are some 400 or 500—I am not familiar with the exact number—under guardianships, but of the class affected by this legislation there are only 227. Of these 227, 23, I am informed have certificates of competency, and they are in effect taken out of this class, leaving only 204 Indians who are under guardianship in Osage County and who will be affected by the legislation now under consideration. There are a few of them, possibly, in adjoining counties.

The Osage Indian, as you probably recall, last year drew \$12,400 per share or headright in cash as a result of the development of his oil, gas, and mineral rights. Some of these 204 Indians own one headright apiece, a few of them possibly own less than one headright apiece, not having been allotted Indians but take an interest by rea-

son of inheritance, and some of them own more than one headright. One in particular owns about eight, and last year that Indian, I am advised by the attorney for her guardian, drew in moneys paid to her through the department and in money which she earned through investments, about \$103,000.

The CHAIRMAN. Was that paid to her guardian?

Mr. WILSON. Yes, she is under guardianship.

So these 204 Indians under guardianship received last year a great amount of money, and during the time that great amounts of oil and gas are produced in the Osage Nation they will continue to receive a vast amount of money.

Now, our interest and our only interest in legislation of the nature of that which is before this committee is this: To have such provisions made whereby as much of that vast sum of money as goes to these incompetent Indians will remain in the business channels of Osage County and its vicinity and thereby add and contribute to the prosperity of our country and our neighborhood. Now, that is all that we are interested in.

The CHAIRMAN. Will the Indians be benefited by that?

Mr. WILSON. I think they will, in the way that I will explain later.

The operation of this bill will not permit it to be done. Through the guardianship system, all that money is paid to local guardians, that is, all the local ward is entitled to will be paid to the guardian to be used as he sees fit. What the ward would be entitled to were he strictly under the supervision of the department would be paid to him, but there should be a considerable portion of that conserved for his use in later years and for the use, possibly, of his heirs and others. That would not be paid to him, but it would be kept by the guardian in local institutions, to be invested by him under the laws of our State in real estate securities, some of it by buying property for the use of the Indian, some in the improvement of the property that the Indian owns at this time, and possibly some in local bonds having an established value and good security. Therefore, it would all be kept in the business channels of the State of Oklahoma and particularly of our immediate neighborhood.

The CHAIRMAN. How is it used now?

Mr. WILSON. It is invested in the same way now; that money which goes into the hands of the guardians, except that they place a certain per cent of those funds in local securities and a great deal more in United States bonds than would be invested in that kind of securities but for the insistence of the local agency that that be done. A great many of our guardians endeavor to comply with the wishes and desires of the local agency as much as possible. Some of them take a little more liberty, for the laws of our State do not regard so closely the wishes of the agency in that particular matter and a good deal of this money is invested in local mortgage securities. There never has been anything lost, but, if there should be any loss by reason of the carelessness or maladministration of the trust affairs by the guardian, the ward is amply secured by a good and sufficient bond. All these guardians are required to give a bond in double the amount of the property that comes into their hands or under their control; and in case that there is any large amount involved, a security company bond of some character is always required.

The objection which we have to the bill which is under consideration is this, that this bill gives the Secretary of the Interior or the local agents the right of veto, so to speak, upon any act which the guardian may wish to take with reference to the disposition of moneys in his hands. It also so operates, the bill itself and the the policy of the Government as it has been expressed by Mr. Burke in his testimony before the committee and by Mr. Wright in his testimony before the House Committee, so as to take practically all of this money which is not paid out to the Indian for his individual and personal use from the business channels of Osage County and vicinity and it will be invested in United States bonds right out of the office here in Washington, thereby taking from the channels or preventing this money which is produced and comes from the natural resources of Osage County from being invested there and reducing to that extent the prosperity of our people.

It also operates this way, that from time to time there will be coming due these loans that will be made locally and those moneys will be paid back to the superintendent of the agency and through him transmitted to the department here and invested in United States bonds here, operating so as not only to prevent the moneys which we feel we are entitled to, coming to Osage County and vicinity, but taking out vast sums which are now there and which have been invested there for the benefit of the Indian in absolutely good securities under the guardianship.

Mr. Senator OWEN. You mean by that that the effect of it would be that as rapidly as these indebtednesses became due there would be abstracted from Osage County that amount of money and those people who have borrowed this money would have to find that money somewhere else?

Mr. WILSON. That is true; that is the idea.

Now, as to the investment of these funds under the guardianship system, the guardian would have the right under the supervision of the court to improve the ward's property, to improve his farm, and build houses, thereby not only advancing the value of the particular property improved but, by reason of improving the country at large, advancing the value of all the properties. I think that the circumstances will show that the Indians probably have sold about one-third of their entire allotment and that they still own two-thirds. Such a system will not only add to the property of these restricted Indians but to the property as well of the unrestricted Indians and the white men. It will add to the aggregate value and enhance the use of the property of that county.

As I said at the outset, there are two classes of these Indians, that are referred to as restricted Indians, those who are under guardianship and those who are not under guardianship. Three Indians addressed you yesterday, and I think probably all of you gentlemen were here and heard Shum-Kah-mo-lah, Bob Morrell and Edgar McCarthy address you. They are of the class of Indians who have a good degree of natural intelligence. They are educated; they can speak the English language; they appear to be healthy men. They are naturally intelligent people, and there is not any weakening of their intelligence by reason of the excessive use of intoxicating liquor or by reason of being narcotic addicts or by reason of disease and things of that kind which enter into the creation of that mental con-

dition which as a rule results in guardianship. Some of the Indians are not as intelligent as the gentlemen you have seen. They naturally have a lower order of intelligence. Others of them have become dissipated by reason of the excessive use of intoxicants and, they have become dissipated by reason of becoming narcotic addicts and some of them are weakened mentally by reason of the fact that they are diseased. Many Indians in that country are badly diseased and their children are born diseased and are born mentally weak.

Now, the operation of this bill, by reason of the bill itself and by reason of the expressed policy of the department as referred to by me, will result in a great deal of this great wealth being taken away. But we realize, gentlemen, that your first duty is to the Indian. If this bill, and the policy of the department under this bill, will be for the best interests of the Indian, we do not hesitate for a minute to say that we realize it is your duty to take care of him; but if a better policy or plan can be devised whereby the Indian will profit to the same extent and be as well looked after and his finances taken care of just as well, and at the same time the citizens of the community which produces this wealth from its natural resources may get at least to a great degree the full benefit of that wealth, then we feel that it is the duty of the Congress to adopt that plan which will be of equal benefit and equal advantage to the Indian whose money is being granted and to the citizen whose country produces these natural resources.

Now, the department urges that it can handle this proposition at a cost of \$20 a head; that is, it can take care of all this money at \$20 a head, take care of Shum-Kah-mo-lah's interests and the interest of Indians under guardianship, all for \$20 a head. That is a good deal cheaper than that fund can be managed and controlled and conserved under the guardianship system. It is a good deal cheaper and, if they are not to get benefits which offset that, then it may be that it is the duty of Congress to adopt that system whereby the individual Indian could be taken care of at a cost to himself of \$20 a head or \$20 a share, whichever it is; but when there is a weakened condition of mentality which makes advisable and proper the appointment of a guardian, there is a corresponding duty and obligation—that is, to take care of that Indian. Shum-Kah-mo-lah can take care of himself. He does not need any personal attention. He may not be as thoroughly competent to take care of his finances as white men who have been educated in financial matters.

Senator KENDRICK. Would you not in this sort of a case have to apply the law of averages in handling this kind of a question?

Mr. WILSON. I think so.

Senator KENDRICK. And if you found you were looking for an investment that would unquestionably conserve the interest particularly of anyone requiring a guardian, could you name any sort of investment that would more nearly meet that condition than Government bonds?

Mr. WILSON. I think so. Government bonds bear interest at the rate of $4\frac{1}{2}$ per cent. I do not know just what the average of these investments is. Our local real-estate securities are absolutely good. They bear various rates of interest, from 7 to 8 per cent on long-time loans, and on short-time loans they sometimes bring a percentage as high as 10 per cent.

Senator KENDRICK. There is a good deal, if I may make a suggestion in that connection, in the question of security in the estates of those who require guardians. There is the question of liquidation, and there is the question of protecting the property against destroying itself by taxes, and when you figure 4 and $4\frac{1}{2}$ per cent under Government bonds, that is just a relative estimate as to the return because of its tax-exempt character.

The CHAIRMAN. Under the laws of Oklahoma, on moneys loaned on real estate, the man who borrows is required to pay a tax in the beginning and there is no further tax on loans of that sort. The Indian himself would not have to pay any tax on a real-estate loan.

Senator KENDRICK. Mr. Chairman, does that preclude the possibility of any tax on the income?

The CHAIRMAN. The Indian does not pay any taxes of that sort.

Mr. WILSON. The Indian does pay income tax on all of his property. They all pay income tax.

Senator OWEN. However, is not an 8 per cent return better than a 4 per cent return?

Senator KENDRICK. I asked if it would not be dependent almost entirely upon the amount of the Indian's return, the amount of his income, because I am told by those who have made a specialty of studying these securities that it is possible on the larger incomes for the interest on Government bonds to net an equivalent of 10 or 11 per cent; and that accounts for the enormous sale of tax-exempt securities.

Mr. WILSON. The mortgage securities in our State are practically exempt. We have there what we call a mortgage tax which is paid at first. It is purely nominal.

Mr. HUMPHREY. Ninety cents on \$1,500.

Mr. WILSON. The man who borrows the money pays that. Under our system in Osage County the man who borrows the money pays the expense of examining the title and of examining the value of the security, he pays the cost of an abstract, and he pays all of the expense with the single exception of the very nominal mortgage tax. That loan is absolutely clear to the Indian, and the Indian pays just like anybody else an income tax. If he is under the department, the department pays it and deducts it.

The CHAIRMAN. The point I was making is, if his money was put in real-estate mortgages he would have no more tax to pay than if he put it in Government bonds, except as it increases his income. That is what I meant by the statement I made a while ago.

Senator FRAZIER. The real-estate loan is made on what percentage of the value of the land?

Mr. WILSON. It is not loaned at a rate more than 50 per cent of the value of the land.

Senator OWEN. The point you make is that the Indian gets a larger rate of interest on these local loans?

Mr. WILSON. Yes.

Senator OWEN. And does that investment develop the Indian's property as well as the white's property?

Mr. WILSON. Yes, sir. It is true that at times there is a surplusage that there are no real-estate loans available for.

Senator OWEN. Has there not been a considerable amount of liquidation and withdrawal of funds from that country?

Mr. WILSON. I think so.

Senator KENDRICK. It is always possible to liquidate upon real-estate loans in your section?

Mr. WILSON. Well, there is the same difficulty in liquidating on real-estate loans in that section as in any other section.

Senator KENDRICK. That is the purport of the question. I happen to know of very great areas in the West where no liquidation can be had at this time unless the lender of the money wants to go into the real-estate business.

The CHAIRMAN. He says that gradually these funds are becoming withdrawn from investments of this nature and there is no necessity for that liquidation.

Senator KENDRICK. I like the statement of the witness that, after all, the primary purpose, I understood him to say, is to protect the Indian. Now, of course, the general public is concerned here, and I agree to the statement that the interest of the general public might well be considered, but always as a secondary proposition to the proper conservation of this property that belongs to these people who require guardians and who are the wards of the Government.

Mr. WILSON. This is the condition of the Indian's fund. He is not a business man. He has a big income. That income amounted last year to \$12,400 a headright, and some of them have several headrights. Their income is far in excess of their necessary yearly expense, and it very seldom becomes necessary for an Indian hastily to realize upon any investment. These moneys are accumulating all the time. He has continually got moneys accumulating, to be reinvested further and further. It does not become necessary for this Indian or his guardian suddenly to have to realize upon his investment.

Senator KENDRICK. The stories of the perfectly splendid incomes of these people are what prompted my question. Under those conditions I can not imagine a situation or a form of investment that would more nearly appeal to the investor, if he were capable of judging this on its merits, than the Government bonds, provided he only considered his own interest.

Mr. WILSON. I do not question the fact that Government bonds as an investment are absolutely safe.

Senator KENDRICK. They are not only safe, but they are sure. They pay a fixed income, and people in that particular financial situation are more concerned on those two points than they are of increasing the amount of their interest.

Mr. WILSON. That is true, but that is only one feature of the question that I expect to discuss. While Government securities are absolutely safe, it is likewise true that they produce the smallest amount of income, absolutely.

Senator OWEN. Have there been any losses by virtue of these mortgages?

Mr. WILSON. There have been no losses, and there is no chance for a loss except by reason of some maladministration. It secures the Indian against loss by reason of this absolutely good surety company bond.

Senator OWEN. In other words, you never had any loss yet, but if there should be one you have got it covered by a bond?

Mr. WILSON. It would be due to maladministration, but he would be protected by the bond.

Senator OWEN. You never had a loss, but if you did have one it would be covered by an adequate bond?

Mr. WILSON. Yes, sir; that is what I mean.

Senator FRAZIER. You made the statement that these loans were absolutely safe. I know of lots of real estate loans that were made six years ago on 60 per cent of the value of the land that to-day are not worth their face value. They can not sell for that.

Mr. WILSON. There has not been any loss in Oklahoma.

Senator CAMERON. For how many years have you been making these investments?

Mr. WILSON. These incomes of Indians have only been so great for the last few years. They probably commenced to increase five or six years ago, and they are gradually growing bigger. The income for the year ended June 30, 1923, was \$12,400 per headright.

The CHAIRMAN. You have been district judge for several years there?

Mr. WILSON. Yes, sir.

The CHAIRMAN. How long?

Mr. WILSON. About 11 years.

The CHAIRMAN. In that one county?

Mr. WILSON. No; not in that one county.

The CHAIRMAN. I mean in Oklahoma.

Mr. WILSON. Yes, sir.

The CHAIRMAN. Now, appeals from probate matters lie in the county court and your court. I want to ask you this—before you get through; not now—how many of those Indians need personal attention? How is the best way to get that personal touch?

Mr. WILSON. I want to dwell on that at considerable length, and I want to state this, that when an Indian becomes so mentally incompetent that he must have a guardian, he always needs personal attention to a more or less degree, some of them a great deal of it. Some of them may be absolutely incompetent, they may be demented, or they may be imbecilic, and they need all kinds of care.

The CHAIRMAN. Personal attention to their bodies or estates?

Mr. WILSON. To their personal welfare, to their health. I have a number of affidavits which I want to read in substantiation of what I will say with regard to that, with reference to the moral viewpoint and all those things.

The CHAIRMAN. In your opinion, is the moral welfare and the general personal welfare of the Indians better served by guardianship than by the administration of the department or not?

Mr. WILSON. Yes, sir, and by reason of no fault of the department. The conditions are better, morally and otherwise, by reason of the guardianship management of their estates, and that is what I want to dwell upon particularly. However, I do mention that there is this purely financial advantage in the guardianship and management of moneys which to a certain extent bears that additional cost. I really can not conceive that the department could manage these estates for \$20 a headright. I can not conceive that they could do it, especially when they do not have the same class of Indians to manage.

Senator OWEN. They could do it by putting the money in Government bonds. There would not be an expenditure from that.

Mr. WILSON. If they put it in Government bonds and sent the money up here; but that is about all they could do. Shum-Kah-

mo-lah, Robert Morrell, and Edgar McCarthy are of the class of Indians who are under the management of the department now. A more inferior class of Indians are under the charge of the guardianships, morally inferior, educationally inferior, inferior in all respects. They are not the same type of men.

Senator CAMERON. How many guardians are there in Osage County?

Mr. WILSON. I am not sure.

The CHAIRMAN. I think the department ought to be limited to the restricted Indians, because they are the ones affected by this legislation.

Mr. WILSON. Your question calls to mind another thing that I want to answer. Our investigation showed there were something over 500 guardianships. The statement of the department is, and I take that statement to be as nearly true as I could state it, for the reason that I have not investigated it, that it is costing \$300,000 or \$400,000 to maintain these guardianships. However, these guardianships that are affected by this legislation should only be charged with their proportion of this expense, as there are only 205 of the total number of guardianships which are affected by reason of this class of legislation because there are only about that many who are of half or more Indian blood and do not have certificates of competency.

Senator CAMERON. How many can show a net income to the wards of $4\frac{1}{2}$ per cent?

Mr. WILSON. Well, I do not know that. I do not know that I have calculated that.

Senator CAMERON. That seems to be the question here, more or less, to see whether the Government could handle the money better.

The CHAIRMAN. I do not suppose the Government can show that it collects $4\frac{1}{2}$ per cent.

Mr. WILSON. Well, I do not know what they can show. I suppose it is invested most of the time. These moneys in the hands of guardians that are not invested in real estate securities are invested in Government bonds or they are invested in Government time certificates and are deposited in the banks at interest, which as a rule in that country is 4 per cent, and some of it, of course, is kept in banks to provide for immediate use. Some of it is invested in short time certificates by reason of the fact that there is no other immediate security available and it lies for a short time without interest, but as a rule it bears 4 per cent interest.

Senator OWEN. When you say the cost is \$400,000, what do you mean, exactly, by that?

Mr. WILSON. Mr. Wright and Mr. Woodward say that the cost of administering guardianship estates is \$300,000 to \$400,000. That includes the guardianship administration of these more than 500 estates as well as the administration of the estates of deceased persons. Now, I do not know whether that is correct, but they do not give any definite figure and probably they are not able to give a definite figure.

The guardianship administration of an incompetent's estate is far more expensive. There is a personal feature to the care of an incompetent, even though that care does not involve absolutely the care of the person. He has got to be looked after, his whereabouts

has got to be known, his conduct and actions have got to be known, and you have got to know what he does with the money that is given to him. If he squanders it, arrangements have to be made whereby he can not do so. In many instances it is absolutely unsafe to give some Indians cash, because they will go out and invest it in whisky and in dope and in other things that are absolutely harmful to them. That kind of an Indian must be watched by the guardian so that he can not do those things.

I recall now one instance of an Indian who is very intelligent in some respects, an Indian who is under guardianship by reason of his mental incapability of taking care of his money. He gets drunk. If the department finds that one of its Indians is drunk, it is more careful about advancing cash to him than it would be to some of these Indians who do take care of their own funds.

Senator OWEN. They have a special roll, do they not, on which the habitual drunkards are placed? They keep sort of a check on them?

Mr. WILSON. I think they have a check. However, if they learn that an Indian under guardianship has gotten drunk and arrested, they generally call the attention of the guardian to it.

In this particular case that I am about to refer to, the Indian got drunk and it was unsafe to give him any amount of money. The guardian had taken the precaution to see that he could not get any cash. However, he could have credit at stores. His mother is an old Indian, who comes into the department regularly and gets her money. I do not know how much she got. Anyhow, this man knew of his mother having come down and gotten an allowance from the department and he followed her out home, some 25 miles, and went to her and asked her if he could borrow a dollar. This old woman went to her hiding place to get the dollar, and the Indian took the rest of it away from her.

Of course, the old woman is not going to complain to the department. She would not cause her son any trouble, but all the money the department gave this old woman was taken away from her. I got that through a statement made by the sister or daughter of the old woman to a gentleman who detailed it to me.

That kind of an Indian has got to be watched. It requires a great deal of care and attention to take care of that Indian and see that he, does not get any money and to see that he does not have the opportunity to do those things which endanger human life and endanger his own health and moral condition; and that takes constant care and attention and watchfulness to a degree that the department is not prepared to undertake. They just simply are not prepared to do it and they can not do it.

Let me call your attention to a little instance that was detailed to me by a cashier of one of the banks. There was an old Indian brought up here along in January to attend the sessions of the Committee on Indian Affairs of the House. He did not have any money, any ready cash. It seems as if his payments had been made to him and they could not pay any more that quarter. So he went to a bank and arranged to get \$200 at 10 per cent. The banker did not want to lend the money unless he had some assurance it would be repaid, and I am informed he made arrangements with the department whereby the bank would be secured in the repayment of that

\$200, they agreeing, I understand, to deduct the amount of the principal and interest of that loan from the Indian's next check. Old Wah-Shah-She is an Indian who had two or three estates and he and his wife between them had about five. He got his money, came up here, went back and a short time ago died. He could not pay the money back, but the point is that soon after he died, in the regular course of affairs, about \$81,000 of money was paid to the administrator of his estate; and yet, with all of that money in the hands of the department, a vast sum which had been accumulated, he had to borrow \$200 and pay 10 per cent on it to let him come up here to Washington.

Now, that is illustrative of the stiffness and the inflexibility of the department's methods.

Senator FRAZIER. Would that have been different if he had been under a guardian?

Mr. WILSON. The guardian would probably have just simply given him his check and made out a statement showing what it was for, gone up to the courthouse and, if the court thought the money should be expended that way, he would have secured the court's approval and then the approval of the agency, which would have given him some means of immediately availing himself of necessary funds—either the cash or some kind of a check. He could have gotten it right there.

Now, there is a great advantage in the guardianship system. I expect that by the time that \$200 is paid, the interest will run up to \$10 or \$15, and that old man had \$81,000, I was informed, in the hands of the department and he had to borrow \$200 and pay 10 per cent on it to take a trip to Washington.

Now, gentlemen, I am about to forget to describe to you this guardianship system. It think it is important that you should know just how these things are managed. In 1912 the Congress conceived that it would be of advantage to the Osage Indians to have the financial affairs of those mentally incompetent Indians handled by guardians instead of through the instrumentality of the Indian Department, and a law to that effect was enacted by Congress whereby it was provided that the Oklahoma State law regarding guardians and wards should apply. That law is a law which was taken, Senator Frazier, from the Dakotas. The Dakotas took it from the State of California, in which State that system of laws was originated, and it was adopted as a very good system in many of the western States. I think Arizona adopted its law from California, and Washington, I think, adopted its law from California. Nevada, Oregon, and other western States, I think, adopted it. Oklahoma adopted the same law and, although legislative changes have been made, it is regarded as an absolutely safe guardianship law.

Under that procedure, one who is regarded as mentally incompetent can, upon petition of some near friend, or relative be brought before the court, and his mental competency to take care of his estate determined by the court and adjudicated after due notice and a hearing. If he is adjudicated not to be competent to take care of his property, then a guardian is appointed who is required to give bond in an amount double the value of the property which probably will come into the hands of the guardian. He is required to make an invoice and return an inventory of the estate. Under that law, no

more than \$25 at a time can be expended without authority of the court.

The CHAIRMAN. Being first obtained?

Mr. WILSON. Yes, sir.

Now, Congress at that time thought that because of the racial distinction between the Indian and the white man, and possibly because of the fact that the close friends and relations of the Indian would be Indians themselves and would not be able to offer him the family and friendly protection that an ordinary incompetent white person would have—Congress took this additional precaution to say that the Indian Department should have a supervision over that guardianship, and that supervision is of this nature: Whenever any paper is filed affecting that guardianship, or at the time that paper is filed a copy of it must be served upon the superintendent of the Osage Indian Agency. He then has a right to appear and supervise the doing of everything that is done. He is placed in the attitude of an attorney to an adversary party. In listening to Mr. Wright's testimony before the House committee, he said all they could do would be to go over there and object, and if their objections were disregarded they were helpless.

Senator KENDRICK. Who has the final word in the selection of a guardian? What other influences are attendant upon such selection? Does the relative and the one interested have a right to recommend who shall be guardian, or is that recommendation considered by the court?

Mr. WILSON. Yes, sir; and as a rule the one recommended is appointed. However, sometimes the party who recommends the guardian recommends somebody whom the court feels is not fitted for that responsibility and he does not appoint him. As a rule he does, however, and the relative has a right to make a recommendation.

Senator KENDRICK. Have you many instances or any at all in which abuses have crept in because of that system of selection?

Mr. WILSON. I do not think, Mr. Senator, that there are many instances. There are the usual instances of abuses that would occur, I think, in every State, in every community, where there are 500 or 600 guardianships. Where there are that many, there will be some abuse. Now, our people are honest and law-abiding people, but probably no more honest and law-abiding than the average citizen of the United States and there are some abuses, unquestionably.

Senator KENDRICK. Are there any unusual benefits or remunerations paid to the guardian of this property? Does he receive any unusual compensation?

Mr. WILSON. Under the law, he does not receive the unusual compensation. Now, in our county they have adopted an arbitrary practice whereby the guardian of an Indian who has a single estate is paid \$250 a year for his services. If he has more than two estates, he is paid a correspondingly increased amount. There is a great deal of detailed court work required. A great deal of it is required particularly because of this agency supervision. As a rule, the guardian has to have an attorney, and he is paid half that much. There is not, or has not been until quite recently, a percentage system, but last winter, after this report came out that there was some scandal

about guardianship matters in Oklahoma, which you gentlemen all know of—

The CHAIRMAN (interposing). That is in the Five Civilize Tribes?

Mr. WILSON (continuing). Our legislature did provide by legislative enactment a scale of fees, and that is a very moderate and reasonable scale of fees, but the practice in Oklahoma now is and always has been that an Osage pays less than is provided for by law. Now, that scale is not mandatory, and we are following the old scale of fees arbitrarily established because it does not transgress that law.

The CHAIRMAN. When you spoke of this law passing last winter, you meant that it fixes a scale of maximum fees?

Mr. WILSON. Oh, yes; it is not mandatory.

The CHAIRMAN. Your Osage practice that you speak of has been in effect for some time and provides for lesser fees and does not conflict with that law.

Mr. WILSON. It provides for lesser fees and does not conflict. That is the point.

Now, that personal attention—and that personal attention feature of it is the big feature, and it is the valuable feature to the Indians—alone, in my judgment, will more than compensate for the excess in cost by reason of the administration of the Indian fund by a guardian. The department is not organized to do this, and probably can not be so organized, and it is not the fault of the department. How could the superintendent of the agency, with the help of a few assistants or a few men, know and do all these things? The guardian can pay particular attention to these matters.

I do not think, Mr. Senator, that the investment of Indian funds in real estate mortgages by the department would be a safe practice to follow, just because of this stiff and unelastic system which prevents them from determining values and making good and safe investments. But there are numerous guardians, and most of them are business men—

Senator KENDRICK (interposing). The two things would not necessarily go together. The guardian himself might be required to limit his investments to certain kinds of securities, and so it would not necessarily follow that a guardianship system would place the funds in one kind of investment or another except by direction of the department or the court. I can easily understand your statement about the guardianship provided, of course, it were capable and sympathetic. The great difficulty I have observed in the operation of the Indian Department is in enabling the Indian with any degree whatsoever efficiently to enjoy the property that he has.

Mr. WILSON. There is another feature of this bill and, while it is not closely related to the objection we have to it, it is, I think, a very important one and I will try to get to it later.

The CHAIRMAN. You are speaking now about the probate procedure. Let me give you a hypothetical case and you tell me how you would go about it. Suppose I am a guardian of one of these Indians and he has a farm and lives on it, and I feel that it would be a good investment to buy some cattle to put on that farm which would cost more than \$25 and therefore must have the approval of the court and the department. Just explain how I would go about securing the authority to invest that amount—an amount over \$25—in milch cows or stock cattle.

Mr. WILSON. The Indian sometimes gets an idea of that kind into his head and he goes to his guardian. He becomes acquainted with him. They are friends. The nature of the full-blood Indian is such that he does not talk to a white man readily unless that white man is an acquaintance. He will not talk to a stranger. The old men, if you go to talk to them as a stranger, will not say anything to you; but they do form their attachments to certain white men and they become acquainted with their guardians and they readily go and tell them what they want. If the idea were such that it appealed to the guardian, he would sit down and talk it over with the Indian, and finally, if he becomes persuaded that that is the best thing to do, he makes an application in writing setting out the facts and the purposes for which this advance is wanted and files it with the clerk of the court. That is an application to the court to permit him to expend this money. At the same time he files a copy of it with the superintendent of the Osage Indian Agency. Practically, that duty is performed by serving it upon his attorney, which is entirely satisfactory. Then, if the attorney after talking it over with the guardian thinks it is all right and the proper thing to do, the attorney says, "That is all right; I have no objection." Then they go before the court. The court listens, and if it appears all right he makes his order; but if it is a matter upon which there ought to be a hearing, they set it down for a date certain and an order is made and the attorney is served with a copy of the order, and upon that date certain or at some future adjourned date a hearing is had for the purpose of enabling the court to determine whether or not that would be a proper investment to make; and if the court finds it is a proper investment to make, an order permitting the guardian to expend a definite sum of money is entered. That order may provide for a lesser sum than that applied for if in the judgment of the court that lesser sum would be sufficient. When that is done, the court knows nothing more about it until at the end of six months or a year when the guardian is required to make an annual or semiannual report, and he reports to the court what was done. At the same time that that report is filed with the clerk of the court, a copy is served upon the superintendent of the agency.

The CHAIRMAN. When you serve notice on the attorney for the tribe, and he appears in the court and objects to the investment being made, that makes an issue which the court passes upon?

Mr. WILSON. Yes, sir.

The CHAIRMAN. Suppose either party is not satisfied with the judgment of the probate court. What is done?

Mr. WILSON. In every matter that is finally settled and that can not be reconsidered by some subsequent action, there is permitted an appeal therefrom to the district court of the State.

The CHAIRMAN. In the case I am talking to you about, suppose the Government thinks that it is improper to make the investment, wouldn't the tribal attorney have a right to appeal?

Mr. WILSON. Yes, sir.

The CHAIRMAN. To what court?

Mr. WILSON. To the district court. There a hearing is had just as a hearing is had in the county court.

The CHAIRMAN. And then there is an appeal from that court?

Mr. WILSON. Yes; to the supreme court of the State. If there is an improper handling of that fund in any manner in which the court

can reconsider at a later date, if it is not a final order in the matter, there is no appeal until some final action is taken with reference to it. If the matter is a question of law which involves any Federal question, it can be appealed from the supreme court of the State to the Federal courts; but as a rule these questions, which do not involve any Federal question, are appealable, finally, to the supreme court of the State.

Senator KENDRICK. Under the guardianship system, it would naturally follow that the benefits derived by the Indian and the satisfaction of the ward or incompetent derived from the estate would depend almost entirely upon the guardian.

Mr. WILSON. Yes, sir; upon the efficiency and character of the guardian, and every guardianship is distinct and separate in itself. There are things that affect one guardianship that do not affect any other. Every separate guardianship stands upon its own bottom.

Senator KENDRICK. May I ask what is the method, if there be one, of changing the guardian in case one proves unsatisfactory? Is there any provision of law about that?

Mr. WILSON. Sometimes they prove unsatisfactory and they resign.

Senator KENDRICK. And suppose the guardian proves unsatisfactory to the ward. Has he any court of appeal to which he can make his appeal?

Mr. WILSON. Yes, sir; if the appointment is unsatisfactory, he can appeal to the district court and from the district court to the supreme court of the State. That is as far as a case of that kind can go. However, in the meantime, under the laws of the State the guardian that is appointed by the court serves.

Senator KENDRICK. Under the operation of the law is there very much disaffection among the incompetents, the wards, with their guardians?

Mr. WILSON. Not much. Occasionally one gets mad because he is not given as much as he wants and becomes dissatisfied, but as a rule they forget that and, generally, if a guardian is a tactful man he will take a little time and argue him out of it. I recall one case in particular, a case in which I represented the guardian. He sometimes wants things that he ought not to have. He goes to the guardian and he is a little peeved. The guardian says, "Well, come back here to-morrow and we will talk about it." As a rule, what the Indian wants is not for his best interests, and maybe the guardian will promise to give him something else.

Now, there is this distinction existing at this time in the management of Indian estates by the department and through the guardianship system, and that is the distinction which is created by the Snyder Act of 1921, and that is this, that the department is limited in its advancement to the Indian to \$4,000 a year.

Senator KENDRICK. To each individual one?

Mr. WILSON. To the individual Indian who is under departmental control, whereas that limitation is not prescribed to the guardian, although that is a point of contention which has created some controversy between guardians and the department. Some of the departmental attorneys have construed the law to be that guardians—

Senator KENDRICK (Interposing) Would your guardianship system prove too cumbersome for the small Indian estates?

Mr. WILSON. No, sir.

Senator KENDRICK. I thought perhaps that plan of administration would be more expensive proportionately as the estate decreased in size.

Mr. WILSON. No, because these Indian estates have some system of regularity to them. They have their allotments of 640 acres, approximately that. Some of them have one estate or headright, and some of them have inherited headrights, but none of them have proved cumbersome and unwieldly. The approximate cost of administering one of these estates is a \$250 guardianship fee, \$125 attorneyship fee, some court costs, and the cost for a bond. That is what it is.

Senator KENDRICK. That is an annual payment?

Mr. WILSON. That is a payment which is made annually. The court costs, a few dollars at a time, are distributed throughout the year. That is the practice and it has gotten down to a system so far as that is concerned because these Indians own no other property than that which is paid to them through the department and such accumulations as come from that.

Senator KENDRICK. Have the Indians been allowed to sell all their land?

Mr. WILSON. Some of them have. Now, these Indians who have been granted certificates of competency as a rule get them for that purpose, to enable them to sell their land, and a great many of them have sold all of their land.

Senator KENDRICK. You do not believe that is a good plan?

Mr. WILSON. Well, it depends upon the Indian and the circumstances. In some instances it probably is. A great deal of that land is not agricultural. It is only fitted for grazing purposes. Six hundred and forty acres would not make a very big ranch, and as a rule that land has been scattered out over the entire Osage Nation. It is not all together. The first selection was of good land. The plan was such that the Indian would get some good and some bad land, and it is probably for the best interest of the Indian. His disposition is to sell that part which is not good for anything except grazing purposes and which is not contiguous to the land which he owns and which is good for farming purposes.

Senator KENDRICK. I wanted to ask if it is not true that the Indian almost automatically becomes a gypsy whenever he is disconnected from the title to his land?

Mr. WILSON. Becomes what?

Senator KENDRICK. A gypsy?

Mr. WILSON. No, I do not think so. That is not true of the Osage Tribe of Indians. I think they are inclined to gravitate to town, and they do not have any great desire to live on farms, separate and apart from others.

Senator KENDRICK. They are not unlike white people on that account.

Mr. WILSON. But they are not a wandering tribe of people. Some of them have wandered away to other places, but they are not at all nomadic.

Senator CAMERON. Is there any reason why a guardian could not have more than one ward? He can have several?

Mr. WILSON. It is limited by the laws of the State to five, but he is not permitted to have more than five unless the ward is a member of his family or a near relative.

Senator KENDRICK. In the operation of your law as to guardianship under that system of handling the Indian, I am wondering if there is not a good deal of juggling going on as to who shall be appointed guardians.

Mr. WILSON. There is some of that, yes, sir, but I do not think it is the rule.

Senator KENDRICK. It is not abused?

Mr. WILSON. I do not think it has been seriously abused. There may have been some abuse of it.

The CHAIRMAN. I will ask you if there is not less and less of it?

Mr. WILSON. Yes, as time goes by. I have been in the Osage country for over five years, and I find there is much less of it now than when I first went there.

The CHAIRMAN. You mean less of professional guardianships?

Mr. WILSON. Yes, sir.

Now, the proponents of this bill have incorporated in this record a great volume of cases. They have not stated in the record what their purpose was in offering this class of testimony. They just put it there, and in many instances it was shown that the cost of guardianships are great.

Now, I want to call your attention to memoranda No. 1513, found on page 111 of this report. The attorney has listed here the guardian fees and attorney's fees.

The CHAIRMAN. You mean by "this report," the printed transcript of the former hearings on this bill?

Mr. WILSON. Yes, sir.

Now, that memorandum reads: "In the matter of the guardianship of Hun-kah-me, No. 655 et al., Lo-tah-sah and Carl T. Kemoha. The guardian in this case was appointed in November, 1919." Then the amounts are shown and it reads: "The fees above were collected, as shown by order and reports of the county court. Two items above may be duplicates, however; different sums appear in report and order as indicated."

Now, it shows that from 1919 up to the date of this memorandum—it does not seem to bear a date—the total guardianship fees were \$8,275 and the total attorneys' fees \$4,450, which makes the cost appear pretty big. However, nothing else is said. You do not know the circumstances nor the conditions, and all you can judge from is what you see on the paper, that, if the attorney has not made a mistake by reason of duplication, the total guardianship fees in this case were \$8,275 and the total attorneys' fees \$4,450, approximating between \$12,000 and \$13,000 as the cost of maintaining that case for five years.

Now, there is a history of that case. I want to read from a statement submitted to me by Mr. Files. He is a member of the firm of Leahy, MacDonald, Holcombe, Lohman & Files. Mr. Leahy is the gentleman who has been present at these hearings until to-day.

The CHAIRMAN. He is a member of the tribe, is he not?

Mr. WILSON. No, sir; he is an intermarriage citizen. [Reading:]

On page 111 of the transcript of the hearings before the Committee on Indian Affairs with respect to the Osage bill is a statement with reference to guardian and attorney fees in case No. 1513. The statement shows that the total guardian-

ship fees drawn by the guardian from the date of his appointment, which was not in November, 1919, but October 23, were a total of \$8,275 guardian fees and a total of \$1,450 attorney's fees. The facts with reference to this case are that there are three separate guardianships filed under case 1513. They are filed under the same case number for the reason that the three persons for whom Charles F. Dodson is guardian are the mother, the daughter, and the son. The mother draws from two and one-third estates, the daughter draws from one and one-fifth estates and the son one-fifth. The fees of the attorney and the guardian in this matter are as follows:

October, 1919, to October 22, 1920, Lo-tah-sah, guardian fees, \$600; attorney's fees, \$300. Hun-kah-me, guardianship fees, \$400; attorney's fees, \$200. Carl T. Kemohah, guardian fees, \$200; attorney's fees, \$100.

October 22, 1920, to October 29, 1921, Lo-tah-sah, guardianship fees, \$600; attorney's fees, \$250. Hun-kah-me, guardianship fees, \$600; attorney's fees, \$250. Carl T. Kemohah, guardianship fees, \$250; attorney's fees, \$100.

October 29, 1921, to October 29, 1922, Lo-tah-sah, guardianship fees, \$600; attorney's fees, \$300. Hun-kah-me, guardianship fees, \$600; attorney's fees, \$200. Carl T. Kemohah, guardianship fees, \$200; attorney's fees, \$100.

October 29, 1922, to October 29, 1923, Lo-tah-sah, guardianship fees, \$750; attorney's fees, \$375. Hun-kah-me, guardianship fees, \$750; attorney's fees, \$375. Carl T. Kemohah, guardianship fees, \$250; attorney's fees, \$125.

Now, that differs a little from this report in its aggregate.

I have here some affidavits regarding the nature of those guardianships and the things they have to contend with.

Mr. HUMPHREYS. Were those figures taken from the same file I got these from?

Mr. WILSON. I do not know; I did not get them myself.

Mr. HUMPHREYS. I got these from the records themselves. Are yours from those records?

Mr. WILSON. I do not know. Mr. Files got them and he gave them to me.

The CHAIRMAN. As a matter of fact, there are three distinct guardianships instead of one.

Mr. WILSON. They extend over a period of five years.

The CHAIRMAN. How much of an estate was handled?

Mr. HUMPHREYS. Five or six estates, perhaps.

Mr. WILSON. I will read you that. Hun-kah-me has an accumulation in the hands of a guardian of \$49,682.92.

Senator OWEN. What were the fees?

Mr. WILSON. The fees in the Hun-kah-me case?

The CHAIRMAN. Over a period of five years.

Mr. WILSON. For three estates, over a period of five years —

Mr. WOODWARD (interposing). The record here shows that it was from 1919 to 1922. That is only three years.

The CHAIRMAN. Well, Judge, in your experience on the bench, were those the usual fees? Is that in accordance with the scale adopted?

Mr. WILSON. When you have heard the history of these cases that I will read to you, I think you will think they were exceptionally small.

Senator OWEN. As compared with the handling of white estates?

Mr. WILSON. As compared with the handling of any estate. Right at the start I want to say that this is an extreme condition; all Indians are not in this shape. I want to read from the affidavits here the condition of the various wards involved in this report, and then detail some other facts which have come to me which are not detailed in these reports. [Reading:]

Lo-tah-sah, the above-named ward, is a full-blood member of the Osage Tribe of Indians, and draws an income from two and one-third Osage Indian

estates. The ward is a woman about 68 years of age, and neither reads, writes, nor understands the English language, and is practically blind. The guardian herein has been a resident of Osage County for 38 years and is able to converse with his ward in the Osage language. At the time the guardian herein was appointed all the funds payable to Osage Indians were paid to them without any restrictions, and after the guardian qualified in said estate, old indebtedness incurred prior to the appointment of a guardian was presented, in the total sum of \$19,889.42; and after a careful investigation of the indebtedness of the guardian—

I presume he means "ward" there. "Ward" is what he means. [Reading:]

the indebtedness was finally settled for the total sum of \$10,833.64—

Thereby, as you will observe, saving to the ward something like \$9,000. [Reading:]

as evidenced by the above report.

And this was attached to the report [reading]:

At this time the ward is not indebted in any sum, and all of the lands owned by the ward are under lease, and all rentals are fully paid at this time. At the time the guardian was appointed, the taxes upon the lands of the ward, together with taxes upon inherited lands owned by her, had not been paid, and it was necessary that the guardian expend the sum of approximately \$1,200 in the payment of taxes and penalty accrued prior to the date of appointment.

That is during the time that she was under the control of the department.

Mr. WOODWARD. Might I ask a question there? Some of the statements are misleading. Would you mind telling what tax situation you are referring to?

Mr. WILSON. I am amplifying this thing.

The CHAIRMAN. It is true that these reports as to the extravagant charges look big if they are not amplified.

Mr. WILSON. Mr. Files has given the figures here, and I will file them with the clerk.

Mr. BURKE. As I understand it, the record shows that a witness before the committee put into the record statements that he took from the files of the court. Now, the attorney is reading a statement that Mr. Files has made, who is a member of some law firm. Do you mean to intend to bring in a statement made by Mr. Files to refute a statement here of a witness who testified that these figures are taken from the court records?

Mr. WILSON. In both instances we have the statements of witnesses as to what the expenses were.

The CHAIRMAN. They are not denying the statements that Mr. Humphreys made but they are amplifying them. That is what I understand to be the purport of this statement.

Mr. BURKE. Mr. Files's statement does not even show where he gets his information.

The CHAIRMAN. He stated in the beginning that Mr. Files was attorney for these Indians. He is attorney for these particular Indians in this case on the docket.

Mr. WILSON [reading]:

The reputation of this allottee is that she is a very disagreeable individual and is very cruel toward her children, and was especially so toward a daughter, who is a total imbecile and for whom Chas. F. Dodson is also the guardian. In this particular case it is very obvious that the ward needs the attention of some person who can see her almost daily. The income of this ward, as shown by the last report, amounted to \$2,097.13 from interest and rentals, and the interest

and rentals this current year will amount to considerably more than is shown by the last report. The data furnished by this report shows the condition of the estate as evidenced by the annual account covering a period from October, 1922, to October, 1923. Upon the hearing had upon said report the court allowed the guardian a fee of \$750, which included the expenses of the guardian for the year covered by the report—

That includes the expenses of the guardian [reading]:

and a fee of \$375 was allowed the attorneys for the guardian, which included the regular fees in the guardianship, together with fees for filing a suit to collect rentals.

Now, here is the statement relating to Hun-kah-me [reading]:

The above ward is a full-blood member of the Osage Tribe of Indians and is a total imbecile. At the time of the appointment of Chas. F. Dodson guardian of this allottee the guardian went to the home of Lo-tah-sah, who is the mother of this allottee, and found the ward confined to the bathroom, and, upon inquiry, determined that she had been confined to this room for several days, and found the ward in a very filthy condition, and the surroundings very unwholesome. The appearance of the ward indicated that she had been badly mistreated. The guardian after leaving the ward with the family for a few weeks discovered that her family were very cruel toward her and were apparently ashamed of her physical and mental condition. At the time of the appointment of Chas. F. Dodson as guardian the ward was about 19 years of age and weighed less than 100 pounds, and carried herself in a stooped condition, and was poorly clad and very indifferent toward her physical cleanliness. Shortly after the appointment of a guardian the guardian purchased a residence property in the city of Hominy and furnished a home for the ward, and has at all times kept a competent person to look after this ward, and has given a great deal of personal attention to her welfare. At the present time this allottee weighs about 160 pounds, carries herself in an upright manner, and the attendant has taught her to sew to a slight extent, and keeps her clean at all times; and the guardian requires that the attendant take the ward out for a walk on each day to give her exercise.

The testimony of a practicing physician at the time the last annual account was heard, showed that her physical condition was vastly improved in comparison to her condition four years ago. The facts also disclose that on two or three occasions the ward herein has been stricken with epilepsy while on the streets of Hominy, and on said occasions the guardian has taken personal charge of her, and arranged for her to be taken to her home and properly cared for, and on many occasions has gone to her residence when she was suffering from any cause. The record also discloses that all of the lands of this ward are leased at this time, and that all of the rentals have been paid with the exception of one or two instances, and where the rentals have not been paid promptly the guardian has instituted the necessary legal proceedings for the collection of the rents. The taxes on all of the lands of the ward have been paid, including back taxes and penalties accrued prior to the appointment of a guardian herein. The real estate listed in the report above, include the residence property in the city of Hominy, and also a tenant house erected upon the homestead allotment of the allottee named herein. The record discloses that the guardian in this case has rendered extraordinary services and has obtained commendable results on behalf of this particular allottee. The condition of her estate as outlined by the report herein and her physical condition is vastly improved. The court made an allowance of \$750 guardian fees, and \$375 attorney fees at the last hearing upon the annual account. The fees allowed the guardian included all incidental expenses of the guardian, and the attorney fees covered the regular fees, together with fees for extraordinary services in the filing of suits for collection of rentals.

Then there is another ward, but it is likely that no extraordinary attention was given to that ward.

I learned this from both Mr. Files and the ward that comparatively recently a moderately cheap automobile was purchased in which she could be taken out for rides and enjoy herself. She is clean and she is in the best possible condition that could be expected due to her deplorable mental condition. She gets into that car and just sits there and laughs and enjoys herself. That poor girl is comfortable now and made to enjoy herself as much as possible.

Now, you see from the statements made in this affidavit the condition she was in at the time the guardian took her over from the departmental management and control. He found her wallowing in her own filth in a bathroom in which she had been locked several times. I was told that she did not use the usual instruments with which to feed herself, but that she would grab up her feed in her hands and smear it all over her face. She has now learned to use a knife and fork and eats with some semblance of decency.

That is an extreme case, of course, but it is an illustration of the condition of that woman under the department's management, probably from no fault, intentional fault, of anybody concerned. It simply shows that the department is not organized to take care of a condition of that kind. If a woman in that deplorable condition is permitted to live under departmental management and control for 19 years in that filthy state, can not we conceive that other Indians in deplorable conditions, even to a less degree, will be overlooked, and are they not that class of people who need guardianship attention? To be sure, Mr. Wright will say, as he said before the House committee, that they are the class of Indians for whom they want guardians, but there was 19 years of time when this poor woman was under departmental management and control, and you see her condition as revealed by this affidavit. That is notoriously the true condition. I call your attention to this case as illustrative of the departmental management, and deduct therefrom, as I said before, that if they overlook deplorable conditions of that kind and let the woman live for years in that condition, how much more probable it is that they will overlook a less deplorable case, one less likely to attract public attention.

Mr. HUMPHREYS. You have not yourself examined the records in this case?

Mr. WILSON. No, sir.

Mr. HUMPHREYS. You do not know that in each of the cases \$1,000 was asked for and the agency cut it down to \$750?

Mr. WILSON. No, sir; I do not.

Mr. HUMPHREYS. I will state that that is true.

Mr. WILSON. That shows the wisdom of the Congress in putting over the guardians a departmental officer, and I want to dwell upon that feature of the case later.

The CHAIRMAN. As I understand it, these allowances were made with the consent of the department?

Mr. HUMPHREYS. Oh, no. In this case they wanted \$1,000 in each case. That was \$3,000 for the guardian, and over my objections \$750 was allowed.

The CHAIRMAN. How much did the department think ought to be allowed?

Mr. HUMPHREYS. We thought that the usual fee of \$250 per head-right was proper.

Mr. WILSON. In my humble judgment, considering the character of the ward and the attention she had to be given, considering the size of the estate, which I believe approximated \$78,000, I do not believe that intelligent people can say that is an unreasonable guardianship fee. I do not feel, gentlemen, that services of that kind, where a woman was taken from the condition in which she was found and made to be as comfortable as possible and enjoy life to the extent

she has been permitted to enjoy life since that time, could be hardly offset in money, and I think, if all her estate had been used to bring about the enjoyment she received under the care of this guardian, the expenditure of her entire estate would have been justified, if her enjoyment could not have been brought about at an expenditure of a less sum of money.

We can not imagine, hardly, a condition of that kind; wallowing in her own excrement and filth in the bathroom, eating with her hands, for she did not know any better, and had had no training. She could not do anything. She had a flicker of intelligence, for she could learn to sew a little bit. She had enough intelligence to, in the last four years, learn how to eat out of a plate with a knife and fork.

Suppose that guardian had been paid \$1,000. Can you say it is extraordinary? I do not feel it would have been, and feel that a criticism of services of that kind and of the charges made for services of that kind in itself, gentlemen, is evidence of the inefficiency of departmental management.

Mr. HUMPHREYS. The work that was performed for this Indian girl was done by a woman employee.

Mr. WILSON. The physical work done was by a woman referred to in this affidavit.

Mr. HUMPHREYS. And she was paid for it, aside from that.

Mr. WILSON. Yes, no doubt it was an expense to the estate.

Senator KENDRICK. The main thing was to have it done.

Mr. WILSON. That could have been done had the department been properly organized before this ward was placed under guardianship, but it was not done. Now, is that \$1,000 a year, or is \$10,000 a year, too much to be paid to a guardian who did bring that girl to a position of comparative ease and comfort?

Senator KENDRICK. When was the guardianship law passed?

Mr. WILSON. 1912.

The CHAIRMAN. This bill proposes practically to do away with it.

Senator KENDRICK. Did it apply to any other tribe of Indians than the Osages?

The CHAIRMAN. They have a similar law applying to the Five Civilized Tribes. There is also a bill proposing to curtail that.

Mr. BURKE. There is a question as to whether there is such a law delegating power to the courts of Oklahoma in the five tribes. It has been a practice, but there is a question as to whether there is a law authorizing it.

The CHAIRMAN. This dual system of allowing probate courts jurisdiction in connection with the department is a process of evolution extending over a period of 16 years to my own knowledge, in that State, in the Five Civilized Tribes.

Mr. WILSON. I want to say this in connection with that, that there is no Indian law with respect to guardianship and the handling of estates of this kind which, I think, approaches in efficiency this Osage Indian law. It is better protection because that law includes not only the law of guardianships in the case of a white wards but it gives the Indian ward an extra protection, a supervision, that the white incompetent does not have.

The CHAIRMAN. How long has the Osage Tribe had a probate attorney as such?

Mr. WILSON. I want to go into that.

Mr. WOODWARD. There are one or two questions that I would like to ask about this case.

The CHAIRMAN. You can refer back to that when he gets through.

Mr. WILSON. Judge Humphreys, who has been before you several times, has for approximately a year been performing the duties of probate attorney, and has done well; but I want to state that he is the only probate attorney that they have ever had who has approximately performed the duties which have been placed upon the superintendent of the Osage Agency by the act of Congress of 1912. It has been neglected up to that time. Many of the instances of criticism that he reports here are conditions that he found before he came into office which, if they are true at all—and I doubt the correctness of them, and the judge does not state they are entirely correct—are things that could have been prevented by proper and efficient administration of this law on the part of the agency's attorney. They have absolutely neglected it.

Mr. HUMPHREYS. Wasn't it the duty of the court to do it?

Mr. WILSON. It was the duty of the court, but the court must be checked by the agency. It is your duty, and when you fail to do it you fail in your duty; and if the court failed, then there is no criticism to be withheld from the failure of the court, but if you fail you are entitled to bear your burden of the criticism, because the Congress thought at the time it made that provision that this supervision should have been attended to. It meant that it should be attended to, and your failure was the failure of the department and was equally grave as any failure of the judges.

Mr. WOODWARD. It is customary to pass the buck to the agency.

Mr. WILSON. And it is customary for the agent to pass the buck back to somebody else. It is very customary, this passing of the buck. The trouble is they do not pass the buck in time. They wait until some condition which is more or less deplorable has been brought out.

I am going to call your attention, gentlemen, to another comparison which is not attended by the deplorable conditions revealed by the last case, but it does make a comparison between the efficiency under departmental management and the efficiency of the guardianship management of the estate. This is a casual case, one of the usual ordinary cases.

This is a letter, Mr. Chairman, addressed to you. I do not know whether the original was sent to you or not; but, anyhow, it was delivered to me for the purpose of being read at this hearing.

It reads:

FAIRFAX, OKLA.,
May 7, 1924.

Senator J. W. HARRELD,

Chairman of the Senate Committee on Indian Affairs, and other Members of the Committee, Washington, D. C.

DEAR SIRS: Citizens of Osage County, Okla., who have read some of the proceedings had before the House Committee on Indian Affairs on what is known as the Snyder bill (H. R. 5726), and have noted the requests therein made by Mr. Snyder and others that instances be cited wherein Osage Indians under guardians are better off than those under exclusive agency supervision, have requested me to submit a showing of such instances, and I hereby undertake to state some observations that have come under my view as a practicing attorney at law in Osage County, Okla.

Mary Kenworthy, Osage allottee No. 235, is a full-blood Osage and was under exclusive agency supervision until November, 1923. For as much as two years prior to that date she had been in failing health. She was afflicted with gallstones, and she got no sympathetic care or treatment and suffered such misery, and by reason of her suffering and want of personal care took to the drug habit, and also drank intoxicating liquors to excess. She became emaciated and quite helpless, and it was the general opinion of those who knew her that she would die in a short time.

In September or October, 1923, Mary and her husband, an illiterate full-blood, made application for the appointment of a guardian. After securing special investigations by the Osage Agency, a guardian was appointed and recognized, and her funds paid out in part by the agency to the guardian, G. C. Bolton, and he forthwith set about to have special investigation by specialists of her condition, sending her out of the State and to the best institutions available, her condition was ascertained, and a successful major operation performed, and she is now restored to health. She has also been wholly restored from the drink and dope habit.

I believe that a life has been saved, and this Osage Indian restored from the dreadful dope habit through the instrumentality of a guardianship. The Osage Agency is entitled to credit in cooperation in this case, but it is doubted that anyone acting for the agency would ever have taken the initiative to do a positive service for this Indian.

Respectfully submitted.

D. E. JOHNSON.

The CHAIRMAN. Gentlemen, I have got to get on the floor of the Senate in order to make a correction in a bill, an Indian bill, which has already passed. I have to get it reconsidered or changed and it is of vital importance that I be there. We will have to quit for this evening.

(Whereupon, at 5 o'clock p. m., the committee adjourned until Monday, May 19, 1924, at 10.30 o'clock a. m.)

OSAGE FUND RESTRICTIONS

MONDAY, MAY 19, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 2.30 o'clock p. m. in the Committee on Commerce hearing room, the Capitol, Hon. John W. Harreld (chairman) presiding.

Present: Senators Harreld (chairman), Frazier, and Ashurst.

Present also: Mr. J. George Wright, superintendent of the Osage Agency; Mr. J. N. Humphreys, probate attorney for the Osage Indians; Mr. Arthur Woodward, tribal attorney for the Osage Indians; and Mr. Paul N. Humphrey and Mr. Charles B. Wilson, jr., attorneys representing citizens of Osage County.

The CHAIRMAN. Mr. Wilson, will you proceed?

STATEMENT OF MR. CHARLES B. WILSON, JR.—Resumed

MR. WILSON. At the time of the adjournment Friday afternoon, I was addressing myself to the proposition that the personal relationship, the personal assistance, and the personal attention given by the guardian to the ward more than offset any additional cost which the guardianship system would entail. Senator Ashurst did not hear the illustration that I gave with reference to one particular case, which, of course, was an extreme illustration, but I will not undertake at this time to repeat it, it being printed in the record.

I have here another letter, similar to the one that I read Friday, from Mr. D. E. Johnson, addressed to the chairman and to the members of the committee. It reads:

Citation of the condition of an Osage Indian under exclusive Osage Agency supervision—Eves Tallchief, Osage Allottee No. 346.

Eves Tallchief is a restricted Osage Indian about 48 years of age, who is married and has a number of children—eight, I believe. He is not under a guardian and never has been. I am quite sure, but have not the record data available to show figures from, that Eves Tallchief has received and disposed of all unrestricted funds that under the law could be paid him. That he has received from the Osage Agency in his annuity payments, and funds paid under the Mosier decision, and from administrators and executors in the past two years, about \$75,000. That he has wholly squandered, dissipated and disposed of the entire amount, and is at this time in debt from \$20,000 to \$30,000. That he has nothing to show for the vast sums of money he has received, except a secondhand automobile, a limited amount of household furniture, possibly 20 head of Indian ponies worth about \$10 per head, and a few cattle. That he is a dope fiend and drinks intoxicating liquors excessively; that he has been sued twice in the past year for divorce by his wife, upon sufficient grounds, and that he is so depraved that he is regarded at times as being dangerous to members of his family; that he is frequently in police court for drunkenness and other charges, and that he lives about as harmful life to himself especially as is possible for him to do.

Eves Tallchief is naturally a very intelligent and upright kind of an Indian, and if placed under a proper guardian, who would give him and his affairs due and proper care, could and would be restored from his miserable condition, and I would say that if a guardian and his attorney could be paid one-fourth the money for their services that he is now spending for dope and liquor they would indeed be well paid for their services.

Respectfully submitted.

D. E. JOHNSON.

Senator ASHURST. Who writes that letter?

Mr. WILSON. Mr. D. E. Johnson, an attorney of Fairfax.

Senator ASHURST. In what capacity does he write it?

Mr. WILSON. He is a local attorney at Fairfax who is personally familiar with the situation.

Without reading them, I want to file certain affidavits with reference to the matter that I took up the other afternoon, Senator. I do not care to go farther into detail. These are affidavits I would like to file with the clerk.

Senator ASHURST. Make a short statement as to what they are.

Mr. WILSON. I read in detail a statement with reference to the case of Hun-kah-me, an Osage Indian who was idiotic and who had been in that condition for some 19 years when she was placed under guardianship. She was found in a very deplorable condition, a condition that, because of lack of organization in the department, the department had been unable to discover or relieve up to the time the guardian was appointed.

Senator ASHURST. That is, she was suffering from a lack of getting her money—what was she suffering about?

Mr. WILSON. She was just simply suffering from a lack of proper attention. She was in the care of her own family, who were full-blood Indians also under the department. She was suffering from lack of care and attention, not because of any particular fault of the department, not because it knew of this condition and deliberately let her suffer, but simply because of want of organization and inability on the part of the department to take care of cases like that. She was found locked up in a bathroom, foul with her own excrement and eating with her hands, without the use of any knife and fork; a very deplorable state. This guardian was appointed and he took her out of there and attempted to have her condition bettered. He purchased a home for her, and now she has a good home. She has an attendant. She has enough intelligence to have been able to learn to sew a little bit and to feed herself with the proper implements, and she is now cleanly. An automobile has been purchased for her, and the woman who takes care of her drives it and she enjoys that in her imbecilic way.

Senator ASHURST. What brought all this about?

Mr. WILSON. The personal attention of the guardian. He knew the situation, and was familiar with the Osage language.

Now, this for the purpose of showing the advantage of guardianship over the attention the department gives.

Senator ASHURST. Well, now, these affidavits are along the same line?

Mr. WILSON. Yes, pertaining to the same case. If you would prefer to have the affidavits read—

Senator ASHURST (interposing). Now, you think the guardianship system should continue? Is that the idea?

Mr. WILSON. Yes, sir. I gave a full statement——

Senator ASHURST (interposing). A guardian for each restricted Indian?

Mr. WILSON. No, no; only for those who are examined and found to need one.

Senator ASHURST. May one person be guardian for a great number of Indians?

Mr. WILSON. Under the laws of our State, one person can not have to exceed five guardianships.

Senator ASHURST. Five wards, for instance?

Mr. WILSON. Yes; five separate guardianships. If you would like to hear this story, I can repeat it.

Senator ASHURST. No, I will get it as you go along.

Mr. WILSON. Now, I am going to refer to several matters that appear in the transcript of the former hearings. Here is the case of Charles V. Hutchinson. I am on page 105 now.

Senator ASHURST. Now, these were cases that were introduced by the proponents of the bill?

Mr. WILSON. I am not able to determine just the purpose for which they were introduced, unless it was to show that Judge Humphreys, the probate attorney, was diligent in his duty to see that the interest of these particular Indians was protected. We claim that up to the time of Judge Humphreys's administration, the department had been very negligent in this matter. We do say that Judge Humphreys is capable and diligent.

The CHAIRMAN. You say that some of these amounts are what they are because the department itself did not look after the probate matters?

Mr. WILSON. That enters into it. For instance, without defining the way in which the department should handle this legal branch of the Osage matter, the act of 1912 did authorize the checking of the probate procedure by an officer of the department. It provided, as I stated the other day, that when any paper is filed in any guardianship matter, at that time a copy must be served upon the superintendent of the Osage Agency, and he is given authority to represent the Indian ward in every matter that comes before the court. He is placed in the attitude of attorney for an adversary party, and he can take charge of or do anything with reference to the protection of the rights of that Indian ward, in spite of the fact that he has a guardian, that an attorney for an adversary party could do in a contested or litigated matter.

Therefore, we have, as I stated the other day, Senator, the same procedure with reference to the incompetent Indian in our State as we have with reference to every incompetent white person, with this additional protection, that the superintendent has the right of a check and has the right to exercise all powers of an adversary attorney.

Now, that statute does not prescribe any procedure, what he might do. The superintendent, while a gentleman and an excellent officer, is a layman. He is not a lawyer. It is my contention that if Congress would make some provision whereby a lawyer could be provided to look after these things, a man educated and trained in probate practice especially to look after these things for the Department, it would be justified by the circumstances in so doing.

My idea is that he should be a man selected or appointed by the Department of Justice rather than by the Indian Department, the

Indian Department to take charge of the administrative matters and of the general business, and when any matter came up requiring the attention of a lawyer in these probate matters and court matters it should be referred to some attorney who is skilled and learned in the practice of the law. That attorney should be paid a good salary, salary enough to command the services and attention of a competent attorney. While at this time Judge Humphreys is competent, skillful, and able, yet the salary that he gets is meager, and his being there is due more than anything else to the personal health of his wife. He had to leave the place where he was. It may be that because of the fact that his salary is small and his ability is such as would command a better salary that he might not stay there very much longer. This bill does not provide for an attorney to take charge of these matters. It says that the superintendent shall be furnished with a copy of all these matters, and that he shall have certain rights, but no attorney is provided for. You have the Osage Indian tribal attorney, whose duty is not to appear in the county courts. Judge Humphreys is an attorney, but he bears the official designation of financial clerk. Now, if he is not there it might be that they might send the janitor, and it seems to me that the law should prescribe some better method whereby this matter could be taken care of.

Senator ASHURST. How is the guardian appointed, by a court of general jurisdiction?

Mr. WILSON. The court is a court of general limited jurisdiction.

(At this point Mr. Wilson repeated, off the record, the procedure incident to the appointment of guardians.)

Senator ASHURST. As a rule do these guardians conserve the property of the Indians pretty well?

Mr. WILSON. I think they do. The conditions of the estate are frequently badly involved at the time guardians are appointed, and it frequently takes a good while to pay off the indebtedness, but after that is done it is the rule that the guardians conserve the estate. They look after the personal interest and welfare of the ward. They give him what he needs.

Senator ASHURST. Do they give him money for his education and clothing and board?

Mr. WILSON. Yes, sir.

Senator ASHURST. Send him to the school he wants to go to?

Mr. WILSON. If it is necessary to send him to school they do so.

Senator ASHURST. What do the grown ones want to do? Do they want to go into some business venture?

Mr. WILSON. No, sir; they do not.

Senator ASHURST. How do they spend their money?

Mr. WILSON. Of course, a great many of them would spend their money if they were given the opportunity. Most of them, you understand, want all their money. They do not want to be under the department, nor do they want to be under guardianship. They want their money, and they want it all; but for the reason that they are incompetent, guardians have to be appointed for many of them.

Senator ASHURST. What pay do the guardians get?

(A discussion relative to the pay of guardians, attorneys, court costs, etc., and relating to the number of guardians, followed. It was made off the record because it was in repetition of what had previously gone into the record.)

Mr. WILSON. In addition to the ordinary costs of guardianship, there are frequently court costs which are brought about by lawsuits that the Indian gets into, growing out of marriage troubles or divorces, or car accidents, or growing out of his being drunk. He is very frequently prosecuted on whisky charges, and in many instances you will find that the costs are made considerable by reason of that litigation.

Another prolific source of court costs in certain instances grows out of heirships and property rights. Each of these Indians is wealthy. It is commonly regarded that the ordinary Indian estate is of a minimum value of \$100,000, and when an Indian dies, and it is uncertain who his relatives are, frequently there are contests growing out of that for the purpose of determining heirships, and that, of course, entails some court costs and attorneys' fees.

The CHAIRMAN. You are now talking about the different items that make up these court costs they are complaining about. Is that right?

Mr. WILSON. I am referring particularly now to memorandum No. 10, in the matter of the estate of Charles V. Hutchinson, No. 2467, found on page 105. Mr. C. W. Stephens is guardian for Charles V. Hutchinson. The guardian was appointed October 20, 1923. The amount of cash on hand now is something over \$12,900. He had paid debts contracted for prior to guardianship in the sum of nearly \$6,000.

Senator ASHURST. Was that under that special statute authorizing the guardians to investigate and pay all just debts of these respective Indians?

Mr. WILSON. No; that was not the statute of 1921 authorizing the payment of all just debts contracted for prior to that debt. It was in a statute authorizing the department to pay those debts.

Senator ASHURST. Do any of these debts come under that special statute?

Mr. WILSON. No, sir; these are debts contracted by Indians having the right to contract debts, contracted since 1921.

Senator ASHURST. Who were afterwards adjudged incompetent?

Mr. WILSON. Yes, under the State law; and practically all of them who have been adjudged incompetent were considerably in debt.

I will now read the affidavit of Mr. C. W. Stephens in that matter [reading]:

Referring to memorandum No. 10 of Judge J. M. Humphreys in the record of the committee on Indian Affairs before the Senate Committee, I wish to state that I am guardian of Charles V. Hutchinson, an incompetent; that before my appointment as guardian for this incompetent he had executed and delivered to the Hudson-Toner Motor Co. his promissory note in the sum of \$2,982.59, secured by a chattel mortgage on a Hudson automobile. I had no knowledge of this transaction; that after my appointment as guardian I presented this claim to the county court and requested that it be set down for hearing and testimony be taken. At the hearing it developed that this note was made after the majority of this incompetent, and that the consideration for this note was the Hudson automobile and accessories and repairs. The court requested the Hudson-Toner Motor Co. to furnish an itemized verified statement of the accessories and repairs, and upon this being furnished to the court a few days later an order was made authorizing me to pay this claim. The memorandum of Judge Humphreys in the record before the Senate committee is erroneous; there was never any objection on his part to the allowance and payment of this claim, and the journal entry on file shows that there was never any objection on the part of the probate attorney to the allowance and payment of this claim. The

journal entry also had attached to it an itemized verified statement covering the accessories and repairs furnished this incompetent. I wish to make the further statement that I never at any time requested the allowance and payment of this claim, but I presented it to the county court and the Osage Indian Agency without any recommendation and asked that a hearing be had on the merits of this claim and the agency direct whether this claim should be allowed or disallowed.

C. W. STEPHENS.

The CHAIRMAN. Your idea is that if claims are allowed under such circumstances as those, it is just as much the fault of the Government as it is of the guardian?

Mr. WILSON. Yes; and the purport of the affidavit is this, that it was an indebtedness that ought to be allowed, and the department made no objection to the payment of it. It was a note probably given in payment of a contract entered into prior to the appointment of the guardian. The man himself had entered into a contract with the Hudson-Toner Motor Co. for the payment of the indebtedness and given a chattel mortgage on it. The hearing was for the purpose of determining whether or not value received had been gotten for the amount of the note.

The next case is memorandum No. 11, in the matter of Pah-se-to-pah. The statement of Judge Humphreys is this, that—

In this case the attorney representing the superintendent of the Osage Agency checked over the report of the guardian and found a mistake of \$25,350, which through inadvertence the guardian has failed to account for. The evidence taken shows that the guardian's report was correct and the proper amounts credited against the guardian, and the report was then approved by the court.

There is no complaint that there was any irregularity there other than that there was a mistake in the report I was the attorney for the guardian in that case; rather, my firm was—

Mr. HUMPHREYS. There was \$25,000 worth of certificates of deposits that was not accounted for in the report.

Mr. WILSON. I probably have forgotten that.

Mr. HUMPHREYS. I am sure you had, but I want to call your attention to it.

Mr. WILSON. But I do recall the \$350. There was no shortage.

Mr. HUMPHREYS. Oh, no; I did not charge that.

Mr. WILSON. What I want the committee to understand is, you simply call attention here to your diligence.

Mr. HUMPHREYS. I just want to show I am diligent.

Mr. WILSON. I do not want the committee to understand from your testimony that there was any shortage or attempt to defraud.

The CHAIRMAN. As I understand it, you are trying to show what this \$400,000 of expense in probate matters consists of. Is that the idea?

Mr. WILSON. That is my general purpose—where it goes and what justifies it.

Here is another case, Memorandum No. 12. That is also one of my cases, I think, although it is not indicated what it was. In that case, in making out that report and listing the number of securities, the scrivener had neglected to note one \$600 bond. But that bond was there at the time.

Mr. HUMPHREYS. This is not your case. It is a case in Fairfax.

Mr. WILSON. Well, we had a case just like it. That was the condition of this case, however; there was no evidence of any attempt to take the \$600 bond.

Mr. HUMPHREYS. This case is a case at Fairfax.

Senator ASHURST. Memorandum No. 7, on page 104 [reading]:

In this case a claim was filed against the estate for a large silk flag for \$115; one coffin or casket, \$2,700; and a number of other items, totaling \$3,415.55, as the funeral expenses for the interment of Fred Wheeler, Osage allottee. An objection was made to these items, as specially to a wagon sheet, \$60; 10 roves, \$160; 1 silk flag, \$115; and a coffin, \$2,700.

What about that? Who had that? Is that a fact, that he had a \$2,700 coffin?

Mr. WILSON. I think that is true.

Senator ASHURST. Who is responsible for anyone having a \$2,700 coffin? What was it, solid gold?

Mr. WILSON. Oh, no; it was supposed to have been copper inlaid.

Senator ASHURST. It ought not to cost \$2,700.

Mr. WILSON. I am told it was hammered brass.

Senator ASHURST. Who ordered that kind of a coffin? Who was the undertaker?

Mr. WILSON. The undertaker was the Big Hill Trading Co.

The CHAIRMAN. Was that all before the court?

Mr. WILSON. Yes, sir.

Senator ASHURST. And the court approved \$2,700 for the coffin? What was the name of the judge?

The CHAIRMAN. Did the department oppose it?

Mr. WILSON. Yes, sir.

The CHAIRMAN. Could not the department stop it?

Mr. WILSON. Yes, sir. It has never been paid for.

Senator ASHURST. He ought to knock off the \$2,000 and be contented with \$700.

Mr. WILSON. That would depend.

Senator ASHURST. It would not depend. You are not going to bury people in \$2,700 coffins and then say this guardianship is all right.

Mr. WILSON. I have the statement in that case.

The CHAIRMAN. How much estate was involved?

Mr. WILSON. I think that it was one Indian estate. I am not sure.

Senator ASHURST. How much money was in the estate?

Mr. WILSON. I think that probably there was about \$6,000 or \$7,000.

Senator ASHURST. And it cost about half of that to bury him. His burial expenses were \$3,415.55.

Mr. HUMPHREYS. Nearly \$10,000, Judge.

Mr. WILSON. That is one of two cases that have excited some considerable comment.

Senator FRAZIER. They must have thought they had that much money left over and they wanted to use it.

Senator ASHURST. The probate judge may be a fine man—he may be a Democrat—but if he is a man of probity he would have brought his fist down and ordered the arrest of an undertaker like that. Why, on the face of it, it is offensive.

Well, I notice here a memorandum "In the matter of the estate of Fred Wheeler" right below that. It reads:

As mentioned in Memoranda No. 7, this case was tried before the court yesterday, December 4, and the superintendent of the Osage Agency appeared by his

attorney and contested the claim of the Big Hill Trading Co. upon the proposition that the special administrator had no authority to pay any claim against the estate of Fred Wheeler.

That the charges were excessive and exorbitant. After the testimony was all in on the part of the claimant, the attorney for the superintendent of the Osage Agency on a point of law had the entire claim disallowed.

Mr. HUMPHREYS. It is up again, Senator. They refiled it and it is again in the district court. It will have to be again fought out. It was again allowed by the county court, and it was appealed by the agency and it is up in the district court again. There are a number of those cases where there are \$2,700 coffins.

Senator ASHURST. You say in the cases of guardianships, there are a number of cases where there are \$2,700 coffins?

Mr. HUMPHREYS. In the administration of those cases, there are a number of cases where the casket costs \$2,700 and up as high as \$3,000.

Senator ASHURST. I want you to put into the record a photograph of the members of this firm that furnishes coffins that cost \$3,000. I want their pictures petrified into this record. I want their pictures put in this place.

Senator FRAZIER. Do you want a picture of the coffin, too, Senator?

Senator ASHURST. I would like to have a picture of the coffin with the undertaker in it. When they are robbing the living Indian it is bad enough, but when they are robbing the dead it is so different.

Mr. WILSON. It was those who inherited the estate who bought the coffin.

Senator ASHURST. But what was the guardian doing?

Mr. HUMPHREY. The guardianship ceases on the death of the Indian, immediately.

The CHAIRMAN. As a matter of fact, under the law, the moment the ward dies, does not the estate vest in the Government—or doesn't it?

Mr. WILSON. No, it does not; it becomes a part of his estate, and as soon as an administrator is appointed it is vested in the administrator. I am not contesting that feature of it.

The CHAIRMAN. As a matter of fact, if the guardianship ceases, the guardian is no longer responsible for that. The courts are, however.

Senator ASHURST. It reminds me of a case of a nigger in our town 30 years ago. He and his wife came to town and registered at a hotel, and they were in town three hours when she got killed, and the expenses of her funeral were \$5 more than her whole estate, which was \$6,000.

Mr. WILSON. These Osages have gotten the idea into their heads that they must have an expensive funeral, and they insist upon getting the best that can be had. They have feasts; it is their tribal custom and the average feast is pretty expensive. That is a family arrangement. From the time of the death until the administrator takes hold it is simply a family arrangement, and some questions come up to the administrator and to the court as to whether or not these bills should be paid.

Senator ASHURST. You have an affidavit about this high-priced casket?

Mr. WILSON (reading):

Pitts Beaty, of lawful age, being duly sworn, deposes and states:

That he is a resident of Osage County, Okla., and has lived in Oklahoma continuously for the past 25 years. That he has been in active business of one kind or another including farming and mercantile business and is now in the dairy and stock-raising business. That he is at this time the chairman of the board of trustees of the town of Fairfax, Osage County, Okla. That on or about the 12th day of July, 1917, he was appointed general guardian of Ben Wheeler, incompetent Osage allottee, roll No. 772, allotment No. 731, the family of said Ben Wheeler, consisting at that time of two allotted children, viz, Fred Wheeler and Mary Wheeler and two unallotted children, Francis Wheeler and Lewis Wheeler, since which time Fred Wheeler and Lewis Wheeler have passed away, for which above-named children the said Pitts Beaty was subsequently appointed guardian.

At the date of the appointment the said Ben Wheeler was many thousands of dollars in debt on account of the fact that he was an incompetent, irresponsible person, not capable of managing his affairs, attending to his own business, and was at that time and now is a terrific spendthrift.

Senator ASHURST. That is this Wheeler case? He was the terrific spendthrift.

Mr. WILSON. This has reference to Ben Wheeler.

Mr. HUMPHREYS. That is his father.

Mr. HUMPHREY. He is giving a history of the family.

Mr. WILSON (reading):

Affiant further states that at the time of said appointment the Osage payments were small and it required considerable sagacity and much scheming to supply Ben Wheeler and his family with the necessities of life from an Osage standpoint, and to pay any part of his indebtedness, and not until the payments increased was it possible for this affiant to pay any considerable amount of his indebtedness, and it was with considerable care and economy that the said guardian managed to pay the entire amount of the said ward's indebtedness prior to the 3d of March, 1921, at which time the said Ben Wheeler was practically out of debt.

Affiant states further that since March 3, 1921, the said Ben Wheeler has accumulated approximately \$20,000 in cash, securities, and real estate purchased from his said income.

Affiant states further that during the term of the guardianship it has been necessary to spend a considerable sum of money for doctor bills and hospital fees for the said Ben Wheeler, he having been in poor health for a period of two and one-half years or three years of the time mentioned in this affidavit.

Affiant further testifies that Lewis Wheeler, one of the unallotted children, was a victim of tuberculosis and it was necessary to procure medical services for him and to take him to different health resorts and hospitals, which was expensive, said expenses being borne by the said Ben Wheeler on account of the fact that he had no Osage income. That the said Fred Wheeler was afflicted with kidney trouble or Bright's disease and that it was necessary that he be taken to the hospital and health resorts and under the care of specialists to endeavor to regain his health, which said sickness covered a period of about three years, during which time the doctor bill and last sickness and funeral expenses amounted to approximately \$12,000. That the amount of the estate of the said Fred Wheeler, deceased, at this time is approximately \$40,000, consisting of cash, securities, and real estate.

Pitts Beaty, the present executor of the last will and testament of Fred Wheeler, deceased, testifies further in reference to the funeral expenses that he believed that it would be right and proper to permit the relatives to manage the funeral arrangements, owing to the fact of the Indian customs, and that he, as executor, left the entire matter to the father, stepmother, and sister of the deceased, Fred Wheeler; that in the distribution of the estate of Fred Wheeler the entire estate was bequeathed to Mary Wheeler and Francis Wheeler with the exception of \$1 to the father; and that he, the said Pitts Beaty, believed that it would be proper and right from the Indian custom to permit the relatives to dictate and provide for the funeral and feast, according to their ancient customs, and he therefore called upon the county court and the representative of the Osage Agency, J. M. Humphries, and apprised them of the fact that according to the

Osage Indian custom the expenses of the funeral, including the feast, would be approximately \$5,000, and in response to said call or communication he received the answer that they had no desire to interfere with the Indian customs in reference to their funerals and was therefore advised to let them alone and let them select their own paraphernalia.

Affiant states that in making this affidavit he is not prompted by any personal interest or ulterior motives but only in the interest of good government and the interest of the Osage Indians as he views the situation, and honesty and fairness to all parties concerned. Further deponent sayeth not.

PITTS BEATTY.

Now, that is the statement of the guardian with reference to that matter.

Now, as to that No. 12, Judge Humphreys, you do not contend that there is any irregularity in that?

Mr. HUMPHREYS. No; not a thing in the world. I just simply put that in to show the superintendent that I was on the job.

Mr. WILSON. Now, with reference to No. 12.

Mr. WOODWARD. Is that all about that Fred Wheeler matter?

Mr. WILSON. I thought I had with me the transcript of the record in that matter.

Mr. HUMPHREYS. Judge, you were not present when that matter was brought?

Mr. WILSON. No, sir.

Mr. HUMPHREYS. The testimony shows in that case, upon cross-examination of the administrator, that he did not inform the court or the superintendent of the Osage Agency with respect to the price of the casket that they were selecting at all. He testified under oath before the county court and the probate attorney that he made no reference at all to the price he expected to be paid for the coffin. He says here in his affidavit that he told us it would cost \$5,000. I want to say here that that is not true.

Senator ASHURST. I want to say here that what I have said I do not wish to be construed as reflecting on the integrity of anybody. I have no disposition to do that, but I want to help the Indian. I want every Indian to have as much freedom as possible if he is declared by the court, by a jury, or by the proper tribunal to be a sound man in judgment and to have the disposition of his property. It is for him to say what he wants, but as long as he is under guardianship that is a different question. We have no right to question a business man as to how much he charges an unrestricted Indian.

The CHAIRMAN. You can see there is a hiatus in the authority of the guardian about these funeral expenses.

Senator ASHURST. That is probably true.

The CHAIRMAN. This bill has a provision that will take care of that.

Mr. WOODWARD. Yes, that will stop it. Up to 1917 these funds were not paid to administrators, and the cost of burying Indians then regardless of the size of the estate never exceeded more than \$650. If these funds are left in the control of the agency, there will not be any \$3,000 funerals.

Senator ASHURST. I would be inclined to be liberal and to allow them to comply with their ancient customs. I have no sympathy with those who would stop snake dances in my State. That is their ancestral habit; they harm nobody. I respect their ancient customs of having a great time and giving the dead a great send-off.

Mr. WILSON. They do make the expenses of those feasts great; that is true.

Upon that hearing—I will read the cross-examination of the guardian by Mr. Humphreys [reading]:

- Q. You authorized the visit to Dr. Shoun, did you?—A. Yes, sir.
- Q. As guardian of Fred Wheeler?—A. Yes, sir.
- Q. And you know these services were rendered, do you?—A. Yes, sir.
- Q. Did you undertake to get a discount on the amount that was being charged? That is, he made some trips, \$20, some that were \$10, and some that were \$8?—A. Yes; at first he was charging \$10. We didn't know the boy was in so serious a condition as he was, and after we knew he was going to need him so much he agreed to charge \$8 a trip.
- Q. The boy was pretty low all the time, was he?—A. Yes, in a pretty bad condition.
- Q. Of what did he die?—A. Well, it was a combination of diseases; his heart and stomach and kidneys and I don't know for sure what else.
- Q. It was not tuberculosis?—A. No, sir.
- Q. No tuberculosis?—A. Not that I know of.
- Q. What was the necessity for fumigating the house?—A. I could not say.
- Q. Did you authorize the house to be fumigated?—A. I don't know that I did.
- Q. Do you know whether the board of health ordered it or not?—A. I suppose the doctor did; he is the health officer over there.
- Q. And he had charge of this case?—A. Yes, sir.
- Q. Now did you help to select the casket for Fred?—A. No, I didn't select. The day Ben Wheeler came in to select this casket I knew the way he would go to the top if possible, and at that time I called the court and also called Judge Humphreys and apprised them of the fact and that it was going to be pretty heavy, because I knew Ben Wheeler would pick out the most expensive thing there. I was in the Big Hill Trading Co. when I called you and I knew about what he would do and that was the reason I called.
- Q. Did you tell Mr. Humphreys or the court that you were going to get a \$2,400 casket?—A. No, because I didn't know it myself.
- Q. Did you see the casket?—A. Yes, sir.
- Q. Was it hammered brass?—A. Yes, it was mighty fine, I know that.
- Q. Are you a judge of brass or metal?—A. I wouldn't say that I was, it was some kind of metal with the appearance of brass.
- Q. If the one that sold it said it was, you had no reason to doubt his word?—A. I have no reason; no.
- Q. You say the father of Fred Wheeler selected the casket?—A. Yes, sir.
- Q. And incurred these other expenses?—A. Yes, sir.
- Q. I hand you Exhibit C, purported to be the claim of the Big Hill Trading Co.—have you seen that before?—A. Yes, sir.
- Q. Have you authorized that?—A. Yes, sir.
- Q. And did you authorize the purchase of those articles on there?—A. Yes, sir.
- Q. And that is the same claim that you referred to in saying you had a conversation with the judge and Mr. Humphreys?—A. Yes, sir.
- Q. How much of an estate had Fred Wheeler?—A. One and one-third.
- Q. How much cash on hand at this time in the estate?—A. Between \$24,000 and \$25,000 in cash.
- Q. How much of the expenditures that have been presented to you covered the last illness and funeral expenses?—A. They are not all in yet; there are two or three other claims I don't have at this time.
- Q. What are the amounts of the bill on file?—A. I don't know.
- Q. \$3,415.65 is the Big Hill Trading Co. for casket and burial expenses, and \$24.50 pharmacy; \$160 is for the grave, and \$1,480 medical services. Do you know of any other bills now outstanding against him?—A. I can't tell exactly.
- Q. Can you estimate about how much they will be? Did you have a nurse?—A. They have all been paid; I paid those as we needed a nurse.
- Q. Can you estimate about how much they were?—A. Around \$300.
- Q. \$300 nurse hire—what other expenses not?—A. There is a doctor bill in Oklahoma City for \$1,500.
- Q. \$1,500 in Oklahoma City?—A. Yes, sir.
- Q. What doctor?—A. Arthur A. White.
- Q. Has that been paid?—A. No, sir.
- Q. Is that being protested?—A. To the extent he sent me a claim for \$1,500 for 10 days' service, and I thought it was too large, and I presented it to the county court and to the agency and they were of the same opinion I was and told me not to pay it, and I informed Doctor White that I could not pay that amount, and if he would cut it down within the bounds of reason I would take

it up, and he wrote me a letter still contending \$1,500, and that is the last time I ever heard of it until I came here to-day, and Mr. Files informed me that the firm of Leahy Macdonald had received an account from some attorney in Oklahoma for Doctor White for \$1,500.

Q. How long was this Osage Indian, Fred Wheeler, sick—his last illness?—A. I think he was taken ill in January.

Q. This year?—A. Yes, sir.

Q. And when did he die?—A. The 24th day of July.

Q. He had been sick then about six months?—A. Yes; that is the last part of his sickness. Doctor Shoun has been doctoring him for a long time, for a year and a half; his bill has been running a long time.

Q. Would you consider it his last sickness?—A. Yes; but never serious until January; between these times I had him to Oklahoma City twice to specialists.

Q. What I am trying to get at—the law provides nothing can be paid but last illness and funeral expenses.—A. That is the last illness expenses; it was a continuous procedure.

Q. Do you know of any other expense?—A. Doctor Beard here in town had a doctor bill, a small one, I don't know the exact amount, and a doctor in Hominy has a bill of about \$250. I presume that is all with reference to that.

The CHAIRMAN. That is the testimony offered before the probate court?

Mr. WOODWARD. That testimony does not correspond with his affidavit which you just filed.

Mr. HUMPHREYS. The \$2,400 should have been \$2,700. I asked him about it.

Mr. WILSON. He said he did not inform you of the amount.

Mr. HUMPHREYS. What I was trying to get at is that he testifies in that hearing that he did not inform the court or me as to what the amount of that casket was.

Mr. WILSON. That is his testimony; yes, sir.

Mr. HUMPHREYS. In this affidavit he testifies that he told us this casket would cost \$5,000.

Mr. WILSON. He said that he informed you that it would be high, but he did not fix any amount. That is thoroughly illustrative of these conditions.

The CHAIRMAN. There are but two of the members of the committee here, so we will adjourn until 2.30 o'clock to-morrow.

(Whereupon, at 3.50 o'clock p. m., the committee adjourned until Tuesday, May 20, 1924, at 2.30 o'clock p. m.)

OSAGE FUND RESTRICTIONS

TUESDAY, MAY 20, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 2.30 o'clock p. m. in the Committee on Commerce hearing room, the Capitol, Hon. John W. Harreld (chairman) presiding.

Present: Senators Harreld (chairman), Curtis, Cameron, Frazier and Ashurst.

Present also: Mr. J. George Wright, superintendent of the Osage Agency; Mr. J. N. Humphreys, probate attorney for the Osage Indians; Mr. Arthur Woodward, tribal attorney for the Osage Indians; and Mr. Paul N. Humphrey and Mr. Charles B. Wilson, jr., attorneys representing citizens of Osage County.

The CHAIRMAN. Proceed with your statement, Judge Wilson.

STATEMENT OF MR. CHARLES B. WILSON, JR.—Resumed

Mr. WILSON. Judge Humphreys, I would like to ask you with reference to your memorandum No. 19, at the top of page 107 of the transcript of the Senate hearings, in which you say, over your signature:

In the matter of numerous estates of incompetent allottees:

In a number of cases guardians for Osage incompetent allottees had been buying new cars and trading in the old cars for a consideration, in some cases from \$1,000 down to as low as \$250, they not giving credit to the ward in the report. In every case in which this occurred it has been contended that where the guardian has traded an automobile for a cash consideration that the same must be accounted for as cash actually received, and the full price of the car as paid for by the guardian, including the purchase price of the old car, should also be shown in the report.

Now, am I to understand that you mean by that that there has been in those numerous cases any attempt on the part of the guardian to commit fraud?

Mr. HUMPHREYS. Oh, no; I will explain that.

Mr. WILSON. I understand what you mean. It might give a false impression to the committee, however.

Mr. HUMPHREYS. I will make that clear. The practice in the courts there has been this, to trade in a car without giving any credit for it in the way of a cash transaction. In other words, the trade has been made and the record will be silent as to the consideration, and I have been trying to call the attention of the guardians to the fact that the car traded in ought to be considered a cash transaction and to be accounted for as cash; and then, on the debit side, the full price paid for the car bought. In that way you get a

complete history of the case, and you are also enabled in that way to keep track of these car trades. Is that clear?

That is what I meant to say.

Mr. WILSON. That is only, then, a matter of the method of making the reports and was not intended to intimate that the guardian had attempted to steal or embezzle the value of the car?

Mr. HUMPHREYS. No.

Mr. WILSON. As I understand the practice with reference to the trading of cars, when an Indian wants to buy a new car and trade in an old car for it, his guardian makes the application in the manner I detailed to the committee yesterday, and when the order is issued permitting the guardian to make this trade, he goes out and consummates the trade and then there is nothing further done until an annual report is made. Now, in many instances it has been the practice of the guardian in making his annual report to make it show that the value of the car was not a cash receipt. He simply shows that he paid out for the car the difference between the actual value of the new car and the value of the old car traded in, whereas Judge Humphreys would have the guardian show the actual purchase price of the new car and the value of the old car traded in. In other words, if a \$2,000 car were bought and the old car was taken in for \$500, the report would show that he had paid of the ward's money \$1,500, whereas Judge Humphreys insists that he show that he had received \$500 as a cash transaction and then paid out \$2,000, leaving the balance just the same. The only difference is in the form in which they make the report of that transaction.

Mr. HUMPHREYS. I did that for this reason, that while I do not charge any one with attempt to defraud, yet the possibility lies there just the same if there is no accounting made whatever of the trade or profit.

Mr. WILSON. All I want this committee to understand is that you are not attempting to charge that guardians have embezzled cars. Several of these proceedings are of the same nature. We explained yesterday those instances where, for instance, some bond or something was not shown upon the report, but at the time, in the presence of the court, and exhibited to the court and to the representative of the agency was that bond.

Here are some other cases where the attorney, Judge Humphreys, shows that some claims were made, always for probably a greater amount in the way of consideration for fees than they were entitled to, and he appeared, and upon his objection those claims were not allowed in full. That is a duty which we contend is a proper duty, and there is no criticism on our part of his conduct, and there should not be on his part any criticism of the guardianship because that is done. It is true, unfortunately, that sometimes there is an attempt to overreach, but it is those few instances of that kind that are causing us some embarrassment in this matter, but they are the exception.

Now, I had intended to dwell upon that matter of the funeral expenses just at this time, but Senator Ashurst called the matter up, and he is not here now. It is not a matter that pertains to guardianships, because, as you know, Senator Harreld, and as every lawyer on the committee must know, when a ward dies the guardianship absolutely ceases. The guardian has no further authority or duty.

He can not make a contract, can not pay out any of the money, and can not receive any of the money. The only thing he can do is just simply to make his report showing what he has done during the time of his guardianship, and there it ends. In this case, that was detailed yesterday, Mr. Beaty had nothing to do with the buying of this coffin or incurring these burial expenses in any way. When an Indian dies, in many cases the family wants to give him a good burial, and it is the family who go and make these expenses. They have an old tribal custom of giving a feast. Probably, in the old days when they did not have much, the feast was a meager affair, but now that they have got money they buy a lot of stuff and they have a big feast, and I am going to give you an itemized account of what was bought at one funeral. They want to buy an expensive coffin and have a lot of things that are expensive, to the white man's way of thinking.

The CHAIRMAN. You claim the guardian has no way to prevent it?

Mr. WILSON. The guardian has absolutely no way to prevent it. His authority has ceased; the man whom he represents is dead, and it is the family that does these things. When it comes to the allowance of the bill, if there are any overcharges that can be found, it is the duty of the court to adjust them.

The CHAIRMAN. That would not arise in the guardianship?

Mr. WILSON. It has absolutely nothing to do with the guardianship matter.

The CHAIRMAN. That would arise in the court by reason of the administration of the estate?

Mr. WILSON. Yes, sir.

Now, we have some affidavits and exhibits here. We have first the affidavit of Mr. J. L. Johnson, who is an undertaker and the only undertaker, I believe, in Pawhuska. Mr. Johnson testified as follows [reading]:

J. L. Johnson, being first duly sworn, on oath states: That this affiant has been engaged in the undertaking business in Pawhuska, Osage County, Okla., for more than 18 years last past; that this affiant had no competition in said business for several years and has had charge of every funeral of a deceased Osage Indian in Pawhuska and contiguous territory for the six years last past; that in no instance has the funeral expenses of any Osage Indian totaled one-fifth of \$10,000; that this affiant has been informed that the impression has been left with Congress that the ordinary cost of an Osage funeral is \$10,000, and that this affiant makes this affidavit for the purpose of refuting any such impression; that this affiant attaches hereto and makes a part of this affidavit a list of all funerals of deceased Osage Indians, mixed blood and full blood, wherein he has had full charge, from January 1, 1921, to this date, giving the name of the deceased, the date, and the total cost of said funeral, which figures include a casket, vault, professional services, use of hearse, and other cars, cemetery and all other charges incidental to and usual in connection with funeral work.

This affiant also attaches hereto and makes a part hereof a list of funerals of deceased Osage Indians who died elsewhere and whose bodies were brought here for interment during the same time. These latter charges, including professional and other services, cemetery charges, hearse and automobile hire, metallic vaults when used, and other ordinary incidental expenses.

This affiant further states that the highest total amount charged by this affiant for any one funeral was \$1,880.90, and that the average total charge for all funerals conducted by this affiant during the above period of time is \$1,430.17; that the highest total price charged by this affiant for the funeral of a deceased Osage Indian whose body was shipped to Pawhuska was \$288, and that the average charge for such funerals during the above period of time is \$182.65.

This affiant further states that in each case where the deceased Indian was a full blood, and that in practically all other cases, itemized bills were presented by this affiant to legally appointed administrators, and were duly collected or are in legal process of collection through regular probate channels.

This affiant further states that the overhead in his business is over 100 per cent and that the average time required in liquidating bills in the cases hereto attached is about six months; that the attached list will show that payment of some bills have been delayed for more than a year, and that such delay is not unusual; that no interest has ever been charged by this affiant or collected on such deferred bills, and that the fact that such bills are not promptly paid adds considerably to the overhead expenses of this affiant's business.

And further affiant sayeth not.

J. L. JOHNSON.

Now, I will read some of the amounts [reading]:

Aug. 8, 1919.	Shun kah mo lah.....	\$1, 144. 00
Sept. 20, 1919.	He ah to me No. 792.....	741. 30
Jan. 17, 1920.	Me gra to me No. 702.....	321. 10
Feb. 5, 1920.	David Copperfield.....	1, 033. 15
Mar. 9, 1920.	Albert Penn.....	959. 75
Mar. 31, 1920.	Me tsa he No. 685.....	976. 00
Oct. 26, 1920.	William Pitts.....	1, 080. 50
Feb. 24, 1921.	Lucy Bangs.....	1, 266. 40
Sept. 8, 1921.	Chas. Me shet sea.....	1, 741. 00
Apr. 1, 1922.	Frank Copperfield.....	1, 613. 40
Apr. 17, 1922.	Jno. Blackbird.....	1, 790. 00
Aug. 22, 1922.	Geo. F. Maker.....	1, 702. 75
Dec. 24, 1922.	Josephine Russell.....	902. 70
Apr. 14, 1923.	Grace Webb.....	1, 457. 14
Dec. 13, 1923.	Tom pah pee.....	558. 50
Jan. 7, 1924.	Hlu ah to me No. 31.....	2, 368. 90
Jan. 29, 1924.	Nah me tsa he (Mrs. O. V. Pope).....	3, 182. 67

In that Nah me tsa he case, O. V. Pope was the guardian, was a white man who was the husband of the deceased. No doubt he made the arrangements for that funeral himself.

Mr. HUMPHREYS. There has not been any charge against this man for overcharging.

Mr. WILSON. I am showing what the rule is.

Mr. HUMPHREYS. There are a good many of those \$3,000 funerals that are not charged against this man at all.

The CHAIRMAN. You mean the general expenses of the feast and everything?

Mr. HUMPHREYS. No; that is just for the casket.

Mr. WILSON. This does not include the feast.

The CHAIRMAN. But this man did not bury the woman for which this \$2.700 was charged?

Mr. WILSON. No, sir. We have his account. This is not his statement. Another firm buried her. Now, the cost in one case here exceeds that cost by \$100 or \$200. This is \$3,182.67.

Now, as to those that were shipped in. In those cases of course, the casket had been purchased and the body had been placed in the casket and shipped in, and after it was received in Pawhuska the charges were these [reading]:

Aug. 20, 1920.	Andrew Opah.....	\$270. 80
Sept. 20, 1920.	Philip Carson.....	102. 10
Mar. 21, 1921.	Julia Pryor.....	156. 00
Sept. 2, 1921.	Mildred Abbott.....	261. 00
Nov. 4, 1921.	Agnes Logan Russell.....	249. 25
Aug. 17, 1922.	Chas. Grant.....	306. 50
Dec. 13, 1923.	Chas. Wah hre she.....	358. 68
Jan. 22, 1924.	Roy James.....	349. 68

Total..... 2, 052. 01

Average cost per case is \$256.62.

The CHAIRMAN. Do I understand you to say that this fellow had no competition there?

Mr. WILSON. For years he had no competition in the county. I do not think he has any competition now in Pawhuska. I do not think there is any one else there in Pawhuska. There are in Hominy and in Fairfax and in other towns.

Now, here is a statement—the one I just read was that of the Hominy Trading Co. Here is Mr. Johnson's list.

The CHAIRMAN. Just give us the highest and the lowest and the average and then put it in the record.

Mr. WILSON. The highest in this case was \$1,880.90 and the lowest was about \$790. The average was \$1,430.16.

(The complete list just referred to is as follows:)

1921

Feb. 9. Jacob Jump, paid July 30, 1921	\$1,777.00
Mar. 2. Prudie Henderson, paid Sept. 15, 1921	877.00
May 28. Chas. Whitehorn, paid Nov. 22, 1921	925.00
May 31. Mo se che he, paid Nov. 18, 1921	1,750.00
June 4. Stewart Mongrain, paid June 28, 1921	1,022.50
July 26. Wy e nah she, paid Nov. 18, 1921	1,752.00
Sept. 24. Dorothy Blaine, paid Aug. 31, 1922	1,730.00
Sept. 26. Antwine Rogers, paid Apr. 11, 1922	790.00

1922

June 1. John Florer Watkins, paid July 21, 1922	1,128.00
July 10. Me shah he, paid Sept. 19, 1922	1,065.00
Aug. 8. Mary E. Hunt, paid Sept. 29, 1922	1,831.70

1923

Jan. 29. Joe Bigheart, paid Aug. 13, 1923	1,567.50
Feb. 22. Gra te me tse he, paid Aug. 25, 1923	1,744.30
Feb. 23. Kenneth Rogers, paid Dec. 15, 1923	1,021.00
Apr. 9. Ed Bigheart, not paid	1,755.00
Apr. 29. Peh tsa moie, not paid	1,732.00
May 31. Sophia Little-Bear	1,734.00
July 26. Jennie Gray, paid Feb. 29, 1924	1,880.90
Aug. 6. Laban Miles, paid Mar. 15, 1924	1,812.90
Aug. 20. Lewis Rogers, sr., paid Dec. 12, 1923	1,732.50
Nov. 24. Joe Logan, not paid	799.75
Dec. 1. Me tsa hi ke, paid Feb. 14, 1924	1,001.00
Dec. 5. Kathleen Bonnicastle, not paid	1,791.50

1924

Jan. 14. Roy James, not paid	800.00
Feb. 25. Nun tsa wah hu, not paid	1,753.65

35,754.20

Average.....1,430.16

SHIPPED TO PAWHUSKA FOR INTERMENT

1922

Jan. 23. Fred Penn	134.00
July 24. Chas. Michelle	241.00

1923

Mar. 15. Mae Pettus	105.00
Mar. 17. Rosa Baconrind	260.00
June 2. Arthur Bonnicastle	273.00
July 23. Clara May Neal	109.00
July 31. Leonard Revard	93.00
Oct. 23. Pearl Mathews	288.00
Nov. 3. Chas. N. Prudom	189.50

1924

Jan. 29. Nah me tse he	206.20
Mar. 8. W. T. Mosier	110.50

Average.....182.65

On this other list of funerals, where the body had been shipped in, the average was \$182.65.

And here is the list of the Fairfax undertaker. That is the Big Hill Trading Co. The highest in this list is the case of Fred Wheeler, the one concerning which the discussion took place yesterday, \$3,408.50, and the lowest was that of a little child, \$360. The average was \$1,605.83.

Mr. WOODWARD. That \$363 case did not cover a member of the tribe.

Mr. WILSON. No, sir; it was a little child.

Mr. WOODWARD. I hardly think that ought to go in.

Mr. WILSON. In this list we had occasion to make some investigation, and found a number of those were Indians who were under the supervision of the Osage Agency there at the time of death.

The CHAIRMAN. How do the charges compare?

Mr. WILSON. About the same. This particular Fred Wheeler was not the one who was under the supervision of the agency.

Here is Louise Collins, \$1,546; John Bates, \$2,110; Anna Brown, \$1,725; Hlu ah to me, \$1,758; Joe Bates, \$1,235; Rita Smith, \$2,537.50; Gra tah me tse he, \$1,921; He lo ki he, \$1,806—another child.

Those were funerals of Indians who were not under guardianship, but were under agency supervision.

Now, we are showing these for the purpose of answering the arguments which were made upon the floor of the House that it was not uncommon for the funeral expenses of an Osage Indian to amount to \$10,000.

Mr. WOODWARD. I want the judge to explain whether he means that those expenses were incurred by the Osage Agency.

Mr. WILSON. No, sir; no more incurred by the Osage Agency than were the funerals of those who had been under guardianship incurred by the guardians.

Mr. WOODWARD. The inference was that they were incurred by the agency.

Mr. WILSON. I did that for the reason that it seemed to be the inference that the expenses in the Fred Wheeler case were incurred by the guardian.

Mr. WOODWARD. Not on our part.

Mr. WILSON. That seems to be the inference. A great many of these cases, when we come down to the bottom of them, do not seem to have been intended the way they appear.

Now, here are some itemized statements by Matthews, Wilson & Co., who are undertakers at Hominy. One funeral was \$1,042; another one was a child's funeral, \$155; another funeral, \$1,008; and still another, \$1,477. Here is one that was just simply a burial, after the body had been shipped in, \$205.

Here is one where the table expense was \$2,657.45, and it includes all of the items which went to the feast. I am not going to read this thing in detail, but enough to show what is done in connection with the feast. First, I will read the actual vault and casket expenses and things of that kind, such as are covered by these other reports. [Reading:]

Vault, \$125; opening grave, \$19.50; hearse, \$25; drayage, \$7.50; embalming, \$35; flag pole, \$7.50; transfer at Oklahoma City, \$10; casket, \$1,500. The silk flag was \$75. Most of these Indians when they bury their dead—

Mr. HUMPHREYS. How much was that silk flag?

Mr. WILSON. \$75. Then there are flowers, \$55.

We start in with a case of eggs, \$15. That was a mistake, so they made a credit of \$6, making it only \$9. There are 32 bread—I do not know what that means—\$4.80; 20 cakes, \$50; 24 pies, \$12; 12 sweet pickles, \$7.20; 12 sour pickles, \$6; onions, \$6; 2 boxes of oranges, \$20; bananas, \$11.10; sack of sugar, \$11; salt, 90 cents; lard, \$22; hind quarter, \$25; 7 hens, \$8.40; cucumbers, \$4.25; aluminum pans, \$5; kettles, \$6; pork, \$102.80; beef, \$110; chickens, \$31.50.

The CHAIRMAN. They seem to want to compete with an Irish wake.

Mr. WILSON. It is their practice to throw all those things away and destroy them when they get through with them. When one of the family dies, they have a practice of giving away the things that belonged to the deceased. Sometimes the mother of a family will die, and all of her intimate personal possessions are absolutely given away. The guardian can not help it, and can not watch these things all of the time. He has to supply them again; they are necessary things, sometimes.

Now, here is a statement which is comparative in its nature, whereby the manner of maintaining two old Indians is set forth, one who is under guardianship and one who is under the charge of the department but not under guardianship. This is offered for the purpose of showing the character of personal service that is rendered by the guardian and that can not reasonably be rendered by the departmental authorities. [Reading:]

Comparison of the conditions of two restricted Osage Indians, one under guardian and the other under exclusive Osage Agency supervision.

He-to-op-pe, Osage allottee No. 864, whose guardian is W. E. Copeland, of Fairfax, Okla., and Ne-wal-la, Osage allottee No. 369.

He-to-op-pe, aged 53 years, and Ne-wal-la, aged 58 years, are brother and sister. He-to-op-pe, being a widow with minor children and in poor health, and unable to speak the English language, and being unable to transact business in her own behalf, was at the instance of the Osage Agency placed under guardian in April, 1920. She was then about \$16,000 in debt, although she had been receiving her entire income from more than two head rights. He-to-op-pe and Ne-wal-la have received exactly the same income from the Osage mineral reservation, and in the past two years have received large incomes from the administrators of estates from which they have inherited, I will say \$60,000 or more each, which has been used as unrestricted money by both He-to-op-pe through her guardian, and by Ne-wal-la on his own behalf.

Copeland as guardian has paid the debts of He-to-op-pe, and has on hand for her in cash and securities about \$74,000; he has purchased for her about the most desirable residence in Fairfax as is shown by a photograph of same herein included; he has furnished He-to-op-pe during the guardianship with all the necessities of life, and about all the luxuries she has requested; she and her family have at all times very attractive, but not the most expensive, automobiles; she has every opportunity for travel and recreation; she goes to the mountains of Colorado in summer and to Hot Springs, Ark., in winter; she went to Washington, D. C., during the past winter; she has a family of four children, of whom she has just reason to be proud; one of her children, the older son, is married and living a most exemplary life on his farm in the country. The younger children are attending school in Fairfax, and He-to-op-pe and her children are cited as an instance of a well cared for, a happy and contented family. He-to-op-pe is in a dangerous condition of health, but by reason of the care and attention of her guardian she is kept in the best condition that can be obtained for her, and her infirmities do not annoy her a great deal of the time.

On the other hand, Ne-wal-la has had and received the same amount of money as Copeland, guardian of He-to-op-pe, and has had the free use of the same, except

only for such supervision as the Osage Agency has given him. Ne-wal-la and his wife, Mary Blackbird Ne-wal-la, who also has large income, live on the reservation at Gray Horse, Okla., in an inferior home, and under original tribal habits of loafing about Indian camps. Ne-wal-la has spent, disposed of, and dissipated the vast sums of money received in the past two years, no less than \$75,000, and has nothing at this time to show for the same except a second-hand automobile, and is greatly in debt at this time, the exact amount of which I am unable to ascertain. I know of some instances of his indebtedness, however.

I suppose he does not intend to include the amount that is held for him by the agency. Nothing is said here. There is no doubt something held by the agency. [Reading:]

Ne-wal-la is addicted to the liquor habit to excess. Recently while drunk he assaulted his wife and inflicted such severe injuries upon her that she had to be removed to the hospital for treatment. Ne-wal-la is frequently a defendant in the police courts upon charges of drunkenness and other charges. Ne-wal-la also has children, and they are following his example by showing up frequently as defendants upon charges of drunkenness and other misdemeanors in the police courts. Ne-wal-la has had no occasion for extraordinary expenditures, and if for the past two years had been under guardian who would have given him and his estate the same degree of care as Copeland has given He-to-op-pe, would have at this time assets of something like \$75,000 that he has not, and no doubt would be living under conditions far more favorable to his welfare and that of his family.

I believe this case shows in a striking way the difference between Osage Agency supervision with a guardian and one without a guardian.

Respectfully submitted.

D. E. JOHNSON.

In connection with this, I would like to exhibit a photograph of the home in Fairfax of this woman who is under guardianship, to show the home surroundings. This, as I said, is offered as a comparison, to show the difference in conditions of the two Indians, one of whom is under guardianship and one of whom is not.

The CHAIRMAN. You might file that photograph. You can not very well get it into the record.

Mr. WOODWARD. Do you know what this house cost?

Mr. WILSON. No; I do not.

I have another very nice little case, having many pleasant features connected with it, and it is a case which Mr. Humphreys furnished to this committee when he was here in the early part of April. This is the case of Marie Crowther, a little half-blood minor Osage Indian, who is under the guardianship of Mr. Robert Stuart. [Reading:]

Robert Stuart was appointed guardian on April 7, 1919. At that time she was a minor about 4 years of age. Her mother was Mary Miles Schoonover, who died from tuberculosis in the spring of 1919, a full-blood member of the Osage Tribe of Indians. Her father, Eugene Crowther, is a white man and had been divorced from the said minor's mother previous to her death, and since has resided in Europe.

Without the interposition of the guardianship Marie Crowther would probably have been taken and probably now be living with her aunt, Anna Free, who resides on a farm about 10 miles from McAlester, Okla. Mr. Stuart, however, placed her in the St. Louis Convent near Pawhuska for a short time, later placing her with Miss Margaret Henneberry, his sister-in-law, who resides with her mother and sister, 215 North B Street, Arkansas City, Kans., and whose home and residence is one of the best homes in Arkansas City. In this environment Marie Crowther has had every advantage of refined Christian influence. She attends the public school nearby and has made rapid progress in her school work. Her associates are children from the best homes in Arkansas City. During her vacations she visits at the home of Robert Stuart in Pawhuska and is given the same consideration as other members of the family.

She has an estate valued at approximately \$100,000, although less than \$10,000 has been paid to the guardian, the larger portion of her estate being in the hands of the administrator of the estate of her deceased mother on account of litigation which has tied up the final closing of this estate.

Marie Crowther is also making rapid progress in music, dancing, reading, and various forms of athletics. The benefits or local talent plays in Arkansas City would not be complete without her presence. The total living and miscellaneous expenses in securing for her the above and foregoing advantages has cost her estate during the five-year period a little better than \$100 a month, and the total guardianship and attorney fees combined amount to less than \$300 per annum. One fee of \$500 has been paid for counsel to H. P. White for services rendered in the Supreme Court of the State of Oklahoma in the Mary Miles Schoonover estate.

In connection with this, we have a number of pictures, one of which shows the little girl a year after she was taken in charge. We had no picture at the time she was taken in charge. At that time she was with an aunt near McAlester, Okla., living in very undesirable and insanitary conditions; and Mr. Stuart, upon being appointed, sent Mr. Humphreys, who is present here, down there to get the little girl. He got her and brought her back, and since then her conditions and surroundings are as revealed by these photographs.

The first photograph I show you is a photograph about a year after she was brought to Pawhuska. Others are kodak photographs, indicating her surroundings and environment at Arkansas City. I have here [indicating] a very recent photograph of this Osage girl, indicating her as she is at this time.

Mr. HUMPHREYS. It is not the contention and the position of the county court that Marie Crowther is not under the supervision of the Osage Agency?

Mr. WILSON. There seem to be conflicting contentions. Some contend, Judge, that she is not, and some contend that she is. I think you contend that she is.

Mr. HUMPHREYS. Has not the county court of Osage County held that the superintendent of the Osage Agency had absolutely nothing to do with the supervision over this Indian in particular?

Mr. WILSON. I do not have any occasion to know whether he has held that way or not. I am not certain; I never had occasion to find out.

Mr. HUMPHREYS. Here is the journal entry in the case.

Mr. WILSON. I think myself that the Federal guardianship extends over Indians in that class.

Mr. HUMPHREYS. I am taking the position of the court. I have here a finding of the court in this particular case.

Mr. WILSON. You may have; I do not know what he holds.

Mr. HUMPHREYS. At the proper time I will introduce this into the record.

Mr. WILSON. I know some lawyers hold that.

The CHAIRMAN. We will take your word for it that the court has held that.

Mr. WILSON. You, Judge Humphreys, are holding otherwise.

Mr. HUMPHREYS. Oh, yes; we are contending that we have jurisdiction over all with Indian blood. We would rather take that position than the other until it is finally decided.

The CHAIRMAN. Anyway, it serves to show that the charge that the guardianships are not good for the Indians is not fully sustained.

Mr. WILSON. It is an instance of personal service; that is all.

Mr. WOODWARD. I will call the Senator's attention to the fact that there is nothing here which shows that this minor was not properly treated when she resided with her aunt. This child is

taken away from her relatives, without a bit of evidence that they were not entitled to keep her.

The CHAIRMAN. You can show that on cross-examination.

Mr. WILSON. I made the statement she was found there amid insanitary surroundings, and Mr. Humphreys went down there and saw all these things.

Mr. WOODWARD. Knowing her people, I can hardly accept the statement that they are living in squalor.

Mr. WILSON. I did not say that, and I understand that is not true.

Mr. WOODWARD. They have the reputation of being very nice people.

Mr. WILSON. I understand they are not living in squalor, and the circumstances are not as disgusting as those others that I read the other day, but the circumstances are not the best.

Mr. WOODWARD. I am surprised that there is any criticism of the family life of Mr. and Mrs. Crowther.

Mr. WILSON. There was some criticism made of the handling of Susie L. Hyatt. I do not know what the purpose was, but I have here the affidavit of Mr. C. W. Stephens, who was recently appointed guardian. [Reading:]

Affiant being duly qualified, on his oath deposes: That his name is C. W. Stephens; his place of residence is Pawhuska, Okla.; and that he is and has been since January 11, 1923, guardian of Susie L. Hyatt above referred to.

That the dates supplied by Judge J. M. Humphreys, probate attorney of the Osage Indian Agency, are not in harmony with the record of the guardianship of the said Susie L. Hyatt.

Probably it was a misprint, Judge Humphreys. [Reading:]

That affiant did not receive any funds as guardian until January 22, 1923, and that in the interval between the date of his appointment and the date upon which he received from the Osage Agency the first funds paid him from the account of Susie Hyatt, he was obliged to advance \$200 of his own money for the subsistence of his ward. That upon January 7, 1924, his annual report as guardian of said Susie L. Hyatt was approved by the probate court of Osage County, Judge J. M. Humphreys giving the approval thereof his approbation; that immediately after the approval of said report affiant was asked to name the amount he desired as a guardian fee in the case referred to. Affiant thereupon made the statement that the amount of the fee should be fixed by the probate court and Judge J. M. Humphreys, and that whatever amount they agreed upon he would consider the fair measure of his services as guardian. Whereupon the probate court and Judge J. M. Humphreys went into conference upon the subject, later advising me that they considered \$1,000 a reasonable fee, and by order of the probate court affiant thereafter drew a check in the amount of \$1,000 as the fee determined by the probate court and Judge J. M. Humphreys.

Susie L. Hyatt has inherited one and one-half headrights. Affiant handled as guardian in this estate during the year 1923 as moneys received and moneys paid out the aggregate of \$92,000, \$37,000 of which was expended in support of said Susie L. Hyatt and her family and the major part in liquidation of claims of creditors.

Affiant, as required by the Osage Agency, for the protection of the estate of the said Susie L. Hyatt, has furnished bond written by an approved surety company in the amount of \$70,000.

Affiant, immediately after qualifying as guardian, recovered by force—

I presume he means by legal procedure—

from an agent of the United States Internal Revenue Department at Wichita, Kans., personal property valued at more than \$3,000, upon which property said agent had levied under a distraint attachment for a claim of the Treasury Department for a part of her unpaid 1918 income tax.

Affiant was thereafter able, having had an audit of her income tax report for the year referred to, to secure an abatement in the amount of \$964, and that sum affiant claims is a clear gain for the estate of his ward.

That affiant discovered collateral, the property of his ward, to the value of \$5,350, which was being foreclosed upon, and which he purchased in an adjustment of the matter for \$2,500, thereby saving for his ward's estate the sum of \$2,850 which may be considered as clear profit.

That affiant, with the approval of the probate court and the Osage Agency, effected a settlement in a suit against one of his ward's minor sons involving a claim of something more than \$700, for \$700 and \$25 attorney fees.

Affiant submits that he has, upon many occasions, received from Judge J. M. Humphreys, the probate court of Osage County, and J. George Wright, superintendent of the Osage Indian Agency, their approval of his acts as guardian and that every act for which he is responsible as guardian for Susie L. Hyatt has had the approval of Judge J. M. Humphreys, probate attorney for the Osage Indian Agency, and there stands on the record of the probate court of said county no objection made by any person on account of any act of affiant in the guardianship referred to.

C. W. STEPHENS.

It seems that the criticism of this case must have been that the fee given to Mr. Stephens was a little in excess of the usual fee of \$250 per estate, but that was because of extraordinary service.

Mr. WOODWARD. Let me say right there that those cases were put into the record for the purpose of showing the fees allowed, and were not selected cases. They were just picked at random from cases filed at the court as examples of fees, and in that case of Mr. Stephens' there was no comment on it as to whether or not it was exorbitant or too small. You will find fees of all sorts in those cases filed, some small, some large, some medium.

Mr. WILSON. A great mass of that stuff, when taken in connection with this discussion of exorbitant fees, may lead members of the committee who do not follow this closely to believe, when they glance through this big record, that they represent some misconduct or mismanagement or some exorbitant charges made by guardians, when in fact they do not. These things might be viewed incorrectly by committeemen who have not time to digest this entire record. Of course, there are a few that are subject to some criticism. Take this instance yeaterday, when Senator Ashurst, from Arizona, picked out a \$2,700 item for a casket. If he did not go any further, he might think all of this great mass of stuff is of that character, when it is not.

Mr. HUMPHREYS. I made myself clear, I think, in the hearings both before the House and the Senate, that these fees were given simply as a basis of comparison between what it costs in court and what the department claimed they could do it for.

Mr. WILSON. I realize this, that these busy Senators who are too busy to attend these hearings are also too busy to read all of this record. I do not think that is a criticism of the members of the committee.

Mr. WOODWARD. There is one thing that Mr. Stephens might have added to his affidavit, and that is that the agency has given a large portion of its time assisting him with his guardianship.

Mr. WILSON. He told me another instance in connection with this case, where he sought the assistance of the department. This old woman's boy was arrested and thrown into jail in southern Kansas, and he went to the agency and asked to see Mr. Wright about what to do about it. He went to see an officer in the department to detail the circumstances. I do not know what the boy was guilty of, but anyhow the old lady wanted the help of her guardian. Mr. Wright

was not there, so he talked with one of the young men in the agency, and the attitude of the young man was expressed in the words, "let him rot." He went to a higher official in the agency, and this official asked him if he had seen the other gentleman, to whom he had previously spoken, and he said, "Yes." The higher official asked him what the man he first saw had said, and Mr. Stephens told him, "Let him rot." "Well," the other man said, "I guess he is about right." That all he could do. A few days later Mr. Wright returned, and he detailed these facts to him. Mr. Wright said, "Have you seen these gentlemen about it?" Mr. Stephens told him he had, and asked Mr. Wright to call them in and ask them what they said. Mr. Wright did call this gentleman in, the first one, and the gentleman told Mr. Wright that he had told Mr. Stephens to "let him rot." Mr. Stephens then asked Mr. Wright, "Do you think that is right?" Mr. Stephens told me that Mr. Wright told him that he did not think it was right the thing to do. He then went up to Kansas and spent the old woman's money to do what he could do to relieve the condition of that boy, at the old woman's request.

Mr. WOODWARD. Who made that statement to Mr. Stephens, when he first went to the office?

Mr. WILSON. Mr. McMann. Mr. Wise made the second statement.

Now, this old woman is mentally deficient because she does not know how to handle finances. She seems to be well educated. If she is not a full-blood Osage, she is more than a half-blood; and in connection with that I want to read a letter she has written to Senator Harreld, which I find among his files on this matter. This old woman is one of the best educated Osages. I understand she is a graduate of the Carlisle school in Pennsylvania. [Reading:]

With reference to the Snyder bill now before the United States Senate, I want to enter my protest against this bill on the following grounds: When the guardian was appointed for me I was drawing for two and one-half headrights and the department allowed me only \$1,000 each quarter to support myself and three small children not on the Osage roll.

Under the supervision they permitted me to become involved to the amount of \$10,000 or \$12,000.

On January 11, 1923, Mr. C. W. Stephens, of Pawhuska, Okla., was appointed my guardian, and since that time he has paid all my indebtedness. The fee granted him by the court and agency of \$1,000 to look after all of my interests, which includes the leasing and supervision of my agricultural and pasture land, I feel is very reasonable.

Mr. Stephens has made it a point during the last year to visit my farm once each month and look after any matters that need attention and I feel that the fee granted by the court and agency is very fair and reasonable to me, and I am much better satisfied with Mr. Stephens as my guardian than when the agency handled my business.

Hoping that you will use your influence to defeat this measure, which I feel to be unjust to the Osage tribe, I am,

Very truly yours,

Mrs. CHAS. HYATT,
Elgin, Kans.

Senator FRAZIER. Why would an educated woman of that kind need a guardian?

Mr. WILSON. She just simply can not handle her funds.

Mr. WOODWARD. Is it not a fact that Mr. Stephens lets her spend more than \$4,000 a year? Under the act of 1921 the department is

limited to \$4,000 a year. Is it not also a fact that, while she says in that letter that the agency permitted her to get \$12,000 in debt, there is no way under the sun for the agency to prevent her from getting a million dollars in debt, if she could get the money?

Mr. WILSON. I expect that is true. Now, those things are not stated as a criticism of the office.

Mr. WOODWARD. I think Mr. Stephens is a good guardian.

Mr. WILSON. They are stated for the purpose of illustrating the advantages of guardianship, and of illustrating the advantage of the personal service which the guardian can give and which the department can not give, for the department employs as its agents there in many instances strange people whom the Indian does not know, whereas the guardian as a rule is a personal friend and in most instances the personal selection of the ward.

This is the case of Pendleton Strike Axe. [Reading]:

At the time of the appointment of the guardian herein this ward was badly in debt. He had very little livestock on hand on his place purchased by himself and wife prior to the appointment of this guardian for the sum of \$32,000, a large part of this indebtedness was outstanding at the time of the appointment and under supervision of agency and approval of the court paid by this guardian. At this time the guardian has on hand cash in the sum of approximately \$4,700.

In addition to the cash the guardian has the following securities:

United States certificates of indebtedness.....	\$10, 000. 00
National Building & Loan stock.....	5, 000. 00
Certificate of deposit.....	22, 000. 00
	<hr/>
	41, 700. 00

The ward is principally engaged in stock raising and farming. The guardian herein has encouraged him in every way possible to enable him to farm and raise stock. New farming implements have been purchased, work stock, and hogs, and he has been assisted in various ways, new fences, stock corrals, hog sheds, feed barns, and machinery and at this time he has one of the best if not the best stocked and appointed farms of any Indian in Osage County. Pasture lands have been leased for his use adjoining his home to enable him to succeed in his cattle raising. He has adopted the habit of remaining on his farm and working. He does not drink intoxicating liquors and deserves every encouragement possible.

The ward at this time owns a number of fine horses, cows, and hogs, and this guardian is endeavoring to assist him in every way through personal advice and supervision. The ward is the father of three unallotted children and the guardian herein has taken every precaution to safeguard the health of said children and provided them with school necessities and encouraged them and their parents to keep them in school at all times.

I do not know just exactly how many estates this ward may own. The guardian is the cashier of the First National Bank, which has deposits of nearly \$2,500,000. He is a business man and a competent man, and he does this work for \$250 per headright. That is what that guardian is paying for that service.

Mr. WILSON. Here is the case of Ho-tah-moie, for whom Mr. F. W. Farrar is guardian. [Reading:]

In the County Court, Osage County, Okla. In the matter of the guardianship of Ho-tah-moie (John Stink) incompetent, Osage allottee No. 350, F. W. Farrar, Guardian. No. 143.

STATEMENT OF GUARDIAN

Ho-tah-moie, or John Stink, as he is commonly known, is an enrolled full-blood member of the Osage Tribe of Indians, being Osage allottee No. 350, and is 61 years of age as shown by the approved Osage roll.

The undersigned was appointed guardian of the said Ho-tah-moie, March 27, 1909, by the county court of Osage County, Okla., and has been during all of said time and now is his guardian. During all of said time said ward has received or participated in the income from only one (his own) original Osage share or headright and did not have much income until the last few years. Said ward is still the owner of his surplus and homestead allotments comprising 660 acres of land in Osage County, Okla. A small rental is procured for the use of the surface of these lands from farmers, cattlemen, or whoever leases them. Said ward has no inherited interests and has no known relatives, although there has been some efforts by various persons to establish a kinship with him—

Probably looking forward to his demise.

The said John Stink, can not speak English and has had no education whatever. Members of his tribe have very little to do with him and he never goes to the Osage Indian Agency. He lives in a tent in the woods about a mile from Pawhuska and has not been in town since 1915. About that time the police of the city of Pawhuska, one day while he was in town with his dogs, killed several of them and John declared he would never return to the city. He is very fond of dogs and always has several around him. He sleeps in the woods or in a tent in the woods generally, winter and summer, and refuses to live in a house, stating through an interpreter that it is hard for him to breathe in a house. He always has two or three dogs with him and insists on his dogs having as good to eat as he.

The dogs must be fat, then, if John is a heavy eater.

He is a hearty eater and has plenty of good food. He has no bad habits, has everything he wants, is in good health, enjoys life, and seems to be more contented than many of the other members of the tribe. He speaks Osage and occasionally talks to the few members of his tribe who visit him. The place where he lives is near the Pawhuska Country Club and he enjoys watching members of the club play golf. He has even accompanied his guardian on the golf links while playing golf.

A white man who speaks Osage and lives in the neighborhood of where Ho-tah-moie lives, is employed to take care him, and his guardian is in constant touch with his caretaker, and said guardian frequently visits his ward and talks with him through an interpreter. Said ward was never married.

The assets of the estate of the said Ho-tah-moie at this time are as follows:

Cash on hand.....	\$7, 817. 90
United States securities, building and loan stock, first mortgages on real estate, personal property.....	44, 403. 72
	<hr/> 52, 221. 62

Respectfully submitted.

F. W. FARRAR,
Guardian of Ho-tah-moie, Osage allottee No. 350.

Subscribed and sworn to before me this 10th day of May, 1924.

[SEAL.]

HELEN MARGATROYD,
Notary Public, Osage County, Okla.

My commission expires March 8, 1928.

Mr. WILSON. Here is the case of John Co-she-he, incompetent, Osage allottee No. 575:

In the county court, Osage County, Okla. In the matter of the guardianship of John Co-she-he, incompetent, Osage allottee No. 575. F. W. Farrar, guardian. No. 2061.

STATEMENT OF GUARDIAN

John Co-she-he, Osage allottee No. 575, is an enrolled full-blood member of the Osage Tribe of Indians and as shown by the approved Osage roll, is 23 years of age, is married, has one child, an infant. His wife is a full-blood member of the Kansas Pottawatomie Tribes of Indians and has no income of her own.

The undersigned was appointed guardian of the said John Co-she-he, by the county court of Osage County, Okla., on October 3, 1921, and has been ever since and now is his guardian.

The said John Co-she-he speaks the English language fluently. He is the owner of 1-7/12th Osage shares or headrights, consisting of his own original share and an inherited interest of 7/12th of another share. He is the owner of approximately 1,400 acres of land in Osage County, Okla., consisting of 660 acres of land allotted to him as his surplus and homestead allotments, the remainder of said land having been partitioned was purchased.

Said ward has been addicted to the use of intoxicating liquor and in recent years has had trouble in his family, at one time his wife suing for a divorce and for division of the property, but by the efforts of the undersigned guardian the divorce action has been dismissed and said ward and his family are at this time living happily together. He has not used intoxicating liquor for several months and influence is being directed by his guardian to induce him to refrain from again using intoxicating liquors.

Said ward owns his own home, a five-room modern residence, in Pawhuska, Okla., with garage, chicken house, and premises in first-class condition.

The said John Co-she-he is a frequent visitor to the place of business of his guardian, coming to his place of business several times a week or any time he wishes to do so, and feels free to talk to his guardian about his personal affairs and experiences, and said guardian advises with him. The wife of the said John Co-she-he also advises with said guardian and does not hesitate to mention any family differences, financial affairs, or things in general. The guardian occasionally visits the home of his ward to see how the family is getting along.

The assets of the estate of the said John Co-she-he at this time, are as follows:

Cash on hand.....	\$3, 663. 85
United States securities, building and loan stock, first mortgages on real estate, house, furniture, and automobiles.....	24, 408. 00
Total.....	28, 071. 85

Respectfully submitted.

F. W. FARRAR,

Guardian of Co-she-he, Osage allottee No. 575.

Subscribed and sworn to before me this 10th day of May, 1924.

[SEAL]

HELEN MURGATROYD,

Notary Public Osage County, Okla.

My commission expires March 8, 1928.

Mr. WILSON. Here is another case in which Mr. Farrar is guardian, Wah-te-sah [reading]:

In the county court, Osage County, Okla. In the matter of the guardianship of Wah-te-sah, incompetent, Osage allottee No. 421. F. W. Farrar, guardian. No. 414

STATEMENT OF GUARDIAN

Wah-te-sah, Osage allottee No. 421, is a full-blood Osage Indian woman, and, according to the approved Osage roll, is 83 years of age, having been born January 1, 1841.

The undersigned was appointed her guardian November 14, 1912, and has ever since been and now is her guardian. She was allotted as surplus and homestead allotments approximately 660 acres of land in Osage County, Okla., and all of these lands have been sold, except said homestead 160 and 20 acres surplus.

On account of age and being totally blind the said Wah-te-sah is helpless and it is necessary to have some one give her personal care at all times. A colored woman who speaks Osage is employed and in constant attendance of the said Wah-te-sah. Wah-te-sah speaks Osage but can not speak or understand English. She lives in a two-room modern house at the Indian village, about 1 mile from Pawhuska, Okla. The undersigned guardian goes out to see his ward occasionally and talks to her through an interpreter. Everything possible for the comfort of said ward is done and said guardian keeps in touch at all times with the said Wah-te-sah, through her colored attendant and other people.

All of the lands above mentioned that were sold, were sold by the local Indian office and the Department of the Interior and the sale of these lands was made prior to the appointment of the undersigned as guardian.

The family of the said Wah-te-sah, died before allotment and she has no near relatives living at this time, but has a number of distant relatives living at this time.

In addition to her headright as an enrolled member said Wah-te-sah inherited and draws an additional five-twelfths, or a total headright of one and five-twelfths.

The assets of the estate of the said Wah-te-sah at this time are as follows:

Cash on hand.....	\$2, 393. 56
United States securities, building and loan stock, real estate first mortgages, real estate, personal property.....	60, 432. 01
Total.....	62, 825. 57

Respectfully submitted.

F. W. FARRAR,

Guardian of Wah-te-sah, Osage allottee No. 421.

Subscribed and sworn to before me this 10th day of May, 1924.

ROBERT STEWART,

Notary Public, Osage County, Okla.

My commission expires February 2, 1929.

Mr. WILSON. The next is the case of Joseph Mills, and is rather an interesting case owing to certain things in connection with it. [Reading:]

In the county court, Osage County, Okla. In the matter of the guardianship of Joseph Mills, incompetent. J. A. Puryear, guardian. No. 967.

STATEMENT OF GUARDIAN

The above-mentioned Joseph Mills is a full-blood enrolled member of the Osage Tribe of Indians, 36 years of age. On March 17, 1917, the undersigned was appointed his guardian by the county court of Osage County, Okla.; that a certificate of competency was issued to the said Joseph Mills by the Secretary of the Interior long prior to appointment of a guardian, and at the time of said appointment the said Joseph Mills had sold and disposed of all his surplus lands.

At the time of the appointment of a guardian said Joseph Mills was the owner of only his homestead allotment and his individual share or right to participate in the tribal funds or property which is principally derived from oil and gas royalties and bonus moneys. That about the time of the appointment of said guardian a certain enrolled member of the Osage Tribe of Indians died leaving a will, in which the said Joseph Mills was named as principal beneficiary and a number of other parties, claiming certain interests, contested said will through the courts of Oklahoma, and in 1920, several years after the institution of said contest, the Supreme Court of the State of Oklahoma decided said contest in favor of Joseph Mills. Up to that time the said Joseph Mills had received comparatively a small amount of income from his Osage interests, but through the efforts of his guardian in sticking to the fight he succeeded in adding to the estate of said Joseph Mills additional interests amounting to approximately one and seven-eighths Osage shares or headrights, increasing the Osage interests of his ward to approximately two and seven-eighths Osage estates or headrights.

In addition to the management of the estate of said ward the said Joseph Mills, while in the United States Army during the World War, was gassed while in France, and when discharged from the Army sometime about the spring of 1919 was not in good health and could not speak above a whisper. Upon the advice of a physician and with permission of the court said guardian sent the said Joseph Mills temporarily to the State of Arizona and, as said ward did not seem to be recovering, by permission of the court the said Joseph Mills was moved temporarily from Arizona to Los Angeles, Calif., where, after about two years, said ward recovered and has since returned to his permanent residence here in Pawhuska, Okla.

While in Los Angeles, on account of exorbitant rents and discrimination against Indians and others than the white race and on account of the condition of his health and the fact that he was addicted to the use of intoxicating liquors, it was difficult for the said Joseph Mills to find a place of abode for himself and family consisting of a wife and 2 children and a dwelling house was purchased for use of the family. Having recovered his health the said Joseph Mills was continually getting in trouble and commenced drinking and legal proceedings were commenced in the courts by parties in California to remove the guardianship to the State of California, including all personal property. The undersigned as guardian

returned the said Joseph Mills and family to Pawhuska, Okla., some time in the fall of 1922, and after a strenuous contest the guardian finally succeeded in retaining the guardianship in Oklahoma. The family of the said Joseph Mills, now consists of himself, wife, and 3 children, one of which is attending an educational institution near Muskogee, Okla. The wife of the said Joseph Mills is a full-blood Seneca Indian and has no income, neither has his children any income. The real estate or temporary residence of the said Joseph Mills, in California, on account of returning to Pawhuska, has been sold recently and will add approximately nine or ten thousand dollars to the assets of said ward at Pawhuska, Okla. That the undersigned guardian has had a great deal of trouble with said ward on account of said ward being addicted to the use of intoxicating liquors even since returning to Pawhuska, until during the last five months, since which time said guardian has succeeded in getting his ward to refrain from the use of intoxicating liquors and it is hoped this will continue.

Upon numerous occasions the undersigned guardian has succeeded in preventing the separation of the said Joseph Mills and his family on account of family differences alleged to have been the fault of the said Joseph Mills and has even secured the dismissal of divorce proceedings by the wife of the said Joseph Mills and the family kept together and they are now getting along all right.

There is seldom a day that the said Joseph Mills does not come in the place of business of the undersigned guardian and talk over various matters, and the wife of the said Joseph Mills also advises with the undersigned guardian and occasionally when controversies have arisen between them, they would each tell their story and said guardian has always been able, although somewhat difficult at times, to iron out the difficulties and keep the family together.

The assets of the estate of the said Joseph Mills, at this time are as follows:

Cash on hand.....	\$1, 606. 04
Securities.....	44, 000. 00
Old Packard car.....	1, 500. 00
Cadillac car.....	3, 000. 00
Real estate.....	10, 500. 00
Furniture and household goods.....	3, 000. 00
Total.....	63, 606. 04

As the said Joseph Mills has had a certificate of competency during all the time mentioned herein and the Secretary of the Interior could not have withheld the funds due the said Joseph Mills, it is very likely that all his estate would have been squandered and further that he would have never succeeded in gaining the additional shares or headrights in addition to his own, if it had not been for the efforts of the guardian and the guardianship system.

Respectfully submitted.

J. A. PURYEAR,

Guardian of Joseph C. Mills, Osage allottee No. 419.

Subscribed and sworn to before me this 10th day of May, 1924.

[SEAL.]

HELEN MURGATROYD,

Notary Public.

My commission expires March 8, 1928.

Mr. WILSON. Sometimes these Indians do move to other States and there attempts are made to transfer the guardianship to other States, but the act of Congress provides that these guardianship of Osage Indians shall be in the courts of Oklahoma. Consequently that can never be done.

Now, these gentlemen are all business men, and competent men. They are all personal friends of the wards. Here are some other instances. This is the estate of Pah-pu-son-tsa [reading]:

In the matter of the guardianship of Pah-pu-son-tsa, adult incompetent allottee No. 520. L. M. Colville, guardian. Date of appointment, December 19, 1919 Ward is the owner of three Osage estates. Ward was in debt at time of appointment in the sum of \$1,269.66.

At the time of appointment of the guardian herein the ward's income was being withheld at the agency on account of the inability of ward to properly expend her funds, her entire income having been squandered and having been

imposed upon by relatives. At the time of appointment she had to her credit at the agency approximately \$7,000 withheld for the above reasons.

At this time the guardian herein has on hand in cash approximately the sum of \$17,900; and in addition to cash the following securities, to wit:

Real estate loans, paying 7 per cent interest.....	\$4, 850. 00
Real estate purchased, valued at.....	11, 458. 24
Certificates of deposit, paying 4 per cent interest.....	8, 000. 00
Bonds, paying 7 per cent interest.....	15, 000. 00
Building and loan stock, paying 6 per cent interest.....	25, 665. 54
Total.....	64, 973. 78

In addition to the above-listed securities the guardian herein has remodeled the house of ward, building a new addition and refinishing house throughout, constructed new yard and garden fences, remodeled barn, built modern chicken house and fences, rebuilt storm cave, cistern and filter, set out shade and fruit trees and yard shrubbery, installed electric lights, refurnished house completely, kept competent help to care for old lady's needs, and purchased for her use a Hudson sedan, under care of competent driver, driver being the husband of the woman who does the housework and cooking.

This ward has one of the neatest Indian homes in the county. She is about 73 years of age; does not speak English. She depends upon the guardian for all needs, averaging three visits per week to the guardian's office. The guardian has personally supervised every improvement made on her premises. She is care free and happy and contented with her condition at this time. She has personal property at this time purchased by the guardian valued at approximately \$3,625.

STATE OF OKLAHOMA, *County of Osage, ss:*

L. M. Colville, of lawful age, first being duly sworn according to law, upon oath states that he is the guardian in the above-entitled case; that the above and foregoing statements are true and correct.

L. M. COLVILLE.

Subscribed and sworn to this 8th day of May, 1924.

[SEAL.]

HELEN MURGATROYD, *Notary Public.*

My commission expires March 8, 1928.

Mr. WOODWARD. Did I understand you to say he had cash in hand uninvested of \$17,000?

Mr. WILSON. Yes; \$17,000—no; it is \$7,000. He has just cashed in a certificate, one of these short-time certificates of deposit.

Mr. HUMPHREYS. I see here he had cash on hand of \$8,208.74.

Mr. WOODWARD. Well, possibly that is on another date.

Mr. HUMPHREYS. This is the last report.

Mr. WILSON. These moneys are being invested as rapidly as possible, and at this time I speak of he had just cashed in one of the Treasury certificates in which he had invested, while there were no permanent securities available.

Mr. HUMPHREYS. Do you know how much Pah-pu-son-tsa's guardian drew from the agency?

Mr. WILSON. No; I do not. Here is a later report that shows, last week, I believe, that the estate had \$86,597.42 on hand.

Mr. HUMPHREYS. Give me the amount she got from the agency.

Mr. WILSON. It says here \$7,000, or approximately that.

Mr. HUMPHREYS. Here is the total amount, \$133,343.29.

Mr. WILSON. Did you get that from the agency?

Mr. HUMPHREYS. Yes.

Mr. WILSON. She has at the present time \$8,000?

Mr. HUMPHREYS. His report does not show that.

Mr. WILSON. Is this Pah-pu-son-tsa, No. 520?

Mr. HUMPHREYS. Yes. That is the only Pah-pu-son-tsa on record.

Mr. WILSON. Do you mean she has been paid that much from time to time?

Mr. HUMPHREYS. Yes; in the aggregate.

Mr. WILSON. That was not paid at one time?

Mr. HUMPHREYS. No; that is the entire amount paid by the agency, \$133,343.29.

Mr. WILSON. Out of that has come living expenses and things of that kind.

Mr. HUMPHREYS. Of course, but that is not what we are trying to get at.

Mr. WILSON. This is since 1919. Now I will read the next one [reading]:

In the matter of the guardianship of Ne Kah She He, incompetent, adult Osage allottee No. 149. L. M. Colville, guardian. Date of appointment, February 11, 1920.

Ward is the owner of two and one-ninth Osage estates.

Debts outstanding at the time of the appointment and since liquidated by the guardian, \$1,083.78.

At the time of the appointment of the guardian herein at the request of the superintendent of the Osage Indian Agency this ward's estate was being squandered and wasted. She is totally blind and at the time of appointment was married to a white man and by whom she has three small children, 7, 9, and 11 years of age at this time; none of these children have any estate of their own. Subsequently the husband of this ward became insane as the result of an old venereal disease; the guardian herein had the husband sent to Vinita to the State hospital. He lived for something over a year and during that period of time the guardian took the ward and children to see her husband on a number of occasions, and upon his death made all arrangements for funeral and burial in Pawhuska.

This ward is a long sufferer from venereal disease and it has been necessary on a number of occasions to have her treated for such disease. She is practically helpless and depends upon this guardian for everything. She does not speak English but understands English to a marked degree. It is almost a daily occurrence for her to visit the office of this guardian or send one of the children for some necessity. The guardian personally purchases practically all the clothing for the whole family, and all household necessities, tends to all improvements, cleaning up of the house and premises, schooling of the children, doctor bills, and drug necessities.

It has been necessary to take this ward to Hot Springs, Ark., for mineral bath treatment several times, and also Claremore, and to place her in Colorado for cool climate in summer owing to her tubercular and syphilitic condition. It has been necessary for the guardian herein to personally take ward and children to the dentist for treatment of teeth, also to a specialist for eye treatment. In short, this ward and her little children are absolutely dependent upon this guardian for practically every necessity.

At this time the guardian has on hand cash in the sum of \$25,544, a Treasury certificate of deposit having been cashed by reason of becoming due, within the past month. In addition to the cash the guardian has securities as follows:

Building and loan stock, paying 6 per cent interest.....	\$6,490.78
Certificate of deposit, paying 4 per cent interest.....	10,000.00
Have invested in her home.....	4,500.00
Personal property valued at.....	1,170.00

Total..... 22,160.78

A short time past this ward was married to a worthless character who in a month's time filed suit for divorce and damages for \$5,000, and the guardian herein succeeded in reducing the suit to a judgment giving the plaintiff \$750 and securing an absolute divorce. The condition of the health of ward making it more advisable to effect a compromise settlement and protect the estate than to

take a chance on her death while the marriage was in effect and thereby lose one-third of the total estate to the detriment of her children.

The guardian herein has remodeled the house of ward and built a substantial addition thereto, making it a very neat and absolutely comfortable home. The place has been improved in many respects, servants house erected, chicken house and yard built, the place well fenced and walks put in.

On a number of occasions the guardian herein at the request of city health authorities has had the children doctored and has endeavored in all ways to keep them in such physical condition to be able to take their places in the public schools of the city. Several times they have become infected with lice and the ward has always depended upon this guardian to procure proper treatment and guard their health and enable them to return to school. The children come to the guardian herein for clothing at all times, school books, and their other personal needs.

Owing to the physical condition of the ward it has been necessary for her to call upon the guardian at all hours of the day and night whenever she needed help for herself and children. And it has often been necessary for this guardian to administer to her needs, personally purchasing medicines and other necessities and taking them to her home.

As the result of recent treatment she is at this time in fair physical condition, but is constantly under the care of a physician.

Guardian fee and attorney fee is \$750 per year.

STATE OF OKLAHOMA, *County of Osage, ss:*

L. M. Colville, of lawful age, first being duly sworn according to law, upon oath states that he is the guardian named in the above and foregoing styled case, that the statements set forth above are true and correct.

L. M. COLVILLE.

Subscribed and sworn to this 8th day of May, 1924.

[SEAL]

HELEN MURGATROYD, *Notary Public.*

My commission expires March 8, 1928.

Mr. WILSON. The next was the case of Eliza Bigheart (reading):

In the matter of the guardianship of Eliza Bigheart, incompetent adult Osage allottee No. 119. L. M. Colville, guardian. Date of appointment July 23, 1920.

Ward is the owner of two Osage estates.

Debts created by ward prior to the appointment of guardian and since liquidated by the guardian, \$8,219.39.

At the time of appointment of the guardian herein at the request of the superintendent of the Osage Indian Agency the ward was deeply indebted, addicted to the excessive use of intoxicating liquors, and her funds had been squandered and wasted.

At this time the guardian herein has on hand in cash approximately the sum of \$12,600; and in addition to cash the following securities, to wit:

Certificate of deposit, paying 4 per cent interest	\$5,000
Bonds, paying 7 per cent interest, nontaxable	10,000
Building and loan stock, paying 6 per cent interest	600
Total	15,600

In addition to the above-listed securities and cash the guardian has purchased and the ward now has on hand a new car valued at \$4,545. The car, a Cadillac sedan, was purchased out of unrestricted funds, and the purchase authorized on the ground that the health of the ward required a closed car. She is badly afflicted with inflammatory rheumatism. The guardian herein has had her in Claremore for mineral baths, and also in Colorado, on the advice of a physician, for her health.

The guardian herein is contesting an estate involving one and a half Osage estates in an effort to secure said estate for this ward, and has succeeded in the lower courts, and the case is now on appeal to the higher courts. The guardian has been called upon constantly to render assistance to this ward owing to her health and the conduct of her children. She is a very frequent visitor to the office of this guardian and the guardian has made numerous trips to her country home in her behalf.

STATE OF OKLAHOMA,
County of Osage, ss:

L. M. Colville, of lawful age, first being duly sworn according to law, upon oath states that he is the guardian in the above-styled case; that the above and foregoing statements are true and correct.

Subscribed and sworn to this 8th day of May, 1924.

L. M. COLVILLE.

[SEAL.]

HELEN MURGATROYD, Notary Public.

My commission expires March 8, 1928.

Mr. HUMPHREYS. Would you mind repeating the securities of Pah-pu-son-tsa?

Mr. WILSON. Yes; I will read it again.

Mr. HUMPHREYS. This is from the guardian direct, filed just before we left home.

Mr. WILSON. This is later than your information, Judge Humphreys.

Mr. WOODWARD. When did he make the report?

Mr. WILSON. I do not know.

Mr. WOODWARD. I think there should be some explanation of it.

Mr. HUMPHREYS. Will you read into the record the amount of the securities, please?

Mr. WILSON. Yes.

Mr. HUMPHREYS. There is about \$40,000 difference between the report I have here and the report you have.

Mr. WILSON. I have the figures as follows:

Cash on hand.....	\$17,980.00
Certificates of deposit.....	8,000.00
Bonds.....	15,000.00
Real estate loans.....	4,850.00
Other securities, B. & L. stock.....	25,665.54
Real estate.....	11,458.00
Personal property.....	3,625.00

Mr. HUMPHREYS. Does that mean the allotment?

Mr. WILSON. No; real estate purchased by the guardian. It means real estate other than the allotment, I think.

Mr. HUMPHREYS. That B. & L. stock may mean something very different than that much money.

Mr. WILSON. I think that means other securities. But this "B. & L." is printed in the form we had printed for the convenience of this hearing.

Mr. HUMPHREYS. If this is installment stock it would not mean \$25,000 in cash.

Mr. WILSON. No. This is paid up stock, but I do not know just what it is.

Mr. HUMPHREYS. The last report shows an inventory of \$47,800 assets.

Mr. WILSON. This is a report we got to-day.

Mr. HUMPHREYS. This was filed the 9th of February, 1924.

Mr. WILSON. There was printed in that Indian Relief Association circular that was circulated so freely a few months ago only one case that, in a remote way, affected the Osage Indians, and that was not a member of the Osage tribe but one who had intermarried, her husband having died. There were things said in that report that were very derogatory.

Mr. HUMPHREYS. If there is no objection I would like to file the agency report at this time, showing the discrepancy between the report that counsel puts in and the one that is filed by the agency.

Mr. WOODWARD. I think that is another person.

Mr. HUMPHREYS. Oh, well; never mind.

Mr. WILSON. I do not care to go into a detailed reading of this statement, but I will say that the statement which appeared in that report was absolutely unfounded and untrue, and I do not think you gentlemen will contend that it has any semblance of truth in it, will you?

Mr. HUMPHREYS. We do not know what the statement was.

Mr. WILSON. Without reading it, I will simply offer this for the record.

Mr. HUMPHREYS. What is the name of the case?

Mr. WILSON. The Martha Washington Roberts case.

Mr. HUMPHREYS. The superintendent of the Osage Agency has never taken jurisdiction of that at all.

Mr. WOODWARD. I do know about that case because all of the interested parties on both sides talked to me about it. I do know that the ward was over in Vinita without any funds for quite a little time.

Mr. WILSON. Do you know that she refused to accept what was offered from the banker over there because her lawyers instructed her not to do so?

Mr. WOODWARD. I know that the guardian in Osage County did not send any money for three months.

Mr. WILSON. He looked after her needs through a banker for her necessary bills to be paid, and that was for the purpose of forcing her back into Osage County, from which she had been taken, and all her property, without the authority of her guardian, by a disreputable stepfather, and squandered over there. He simply refused to give her any money, but did make arrangements for her care and keep with a banker there in Vinita. And her lawyers over there, who were employed by her stepfather in trying to get the estate into that county, instructed her not to accept payments from this banker, and she did not do it. And during that time this suffering that is detailed in this report and the death of her child occurred. But it was not the fault of the guardian, because the money was there, except that she was not permitted to take cash, but her expenses would have been taken care of, and she refused to accept it in that way.

(The papers referred to are here made a part of the record, as follows:)

In re guardianship of Martha Washington Roberts.

Martha Washington Roberts is a Shawnee Indian, having the status of a white person. While in her teens her stepfather, John Axe Washington, married her off to an old Osage Indian named To-wah-e-he, 72 years old, who died within two years. All of his property was acquired by his surviving wife, Martha, under the provisions of a will approved by the Secretary of the Interior, and passed to her unrestricted. Martha thus became owner of a merchantable title to 1,020, acres of land, and her stepfather proceeded to have Martha sell all her Osage lands for about one-fifth their value, procured the money from Martha, and dissipated it. Afterwards Martha married a Mexican named Roberts, was later divorced from him, but still bears his name.

After the money received from the sale of the lands, and money received from payments were dissipated and squandered, a legal guardian was appointed for

Martha by the county court of Osage County, Okla. An investigation was made by the guardian, and his attorneys, through a hearing had in the county court of Osage County, as to the sale of the lands, sale price, and the disposition of the proceeds, with the result that the purchaser of the lands agreed to convey same back to Martha on reimbursement of amount paid by him. This was done, the lands conveyed back to Martha, and she is now the owner of the same by reason of the interest taken and efforts put forth by the guardian.

After the lands were reconveyed to Martha she, through her guardian, made extensive improvements on same. The old home place of To-wah-e-he, 4 miles east of the town of Hominy, was remodeled and made into a comfortable home, including a good barn, chicken house, well house, modern cement cellar, well fenced with 3-wire and hog-tight fencing, making it one of the best improved homes in Osage County. This farm had about 120 acres under cultivation and all necessary machinery and implements necessary to farm same, together with a team of mules and a team of mares, purchased and placed on the farm for use thereon. Also a Packard automobile for the use of Martha and her family. The farm was also stocked with milch cows, hogs, and poultry. The cost of improving the home place, including the purchase of the automobile and stock, was \$5,336.32. The cost of improving another tract of land, known as the Duling lease, was \$1,604.55, making a total of \$7,251.02. In addition to this, the guardian had invested in first real estate mortgages the sum of \$7,050 and had cash on hand in the sum of \$4,010.07, making a total accumulation in the sum of \$11,060.07. In addition, during the year from May 1, 1922, to May 4, 1923, the guardian paid direct to Martha, the ward, to be expended by her, the sum of \$2,639.10 and further paid a grocery bill and store accounts contracted by her in the sum of \$1,142.59; also paid her medical bills in the sum of \$289, making a total of \$4,070.69.

After the appointment of a guardian for Martha the golden stream of money flowing through Martha to her stepfather, John Axe, derived from the sale of lands and payments made direct to Martha, ceased, and instead the accruing payments used for the building up and improving Martha's lands for her individual needs and for investment. The stepfather, John Axe, became dissatisfied, and conceived the idea of removing Martha from her splendid home in Osage County to a log hut in the vicinity of White Oak Hills, near Vinita, in Craig County, Okla., where he hoped to have her property likewise removed, where he hoped to dominate Martha and control and procure her funds. To this end he sent trucks and wagons from Vinita to the home of Martha in Osage County and, without the knowledge or consent of the guardian, removed the cattle, hogs, horses, and poultry and furniture from Martha's farm home to the log cabin at White Oak, killed and ate the poultry and some of the hogs, disposed of the wagon, and mortgaged a portion of Martha's property. While Martha was staying in the vicinity of White Oak her baby sickened and died.

An application was filed in the county court of Osage County, Okla., by Vinita, Okla., attorneys, to transfer the property of Martha from Osage County to Craig County, Okla. One Gertrude Bonnice was present and purported to write up this hearing, which was filed as the Osage County portion of a report made and filed by the Indian Welfare Committee, General Federation of Woman's Clubs, American Indian Defense Association, and Indian Rights Association. The report itself would lead one to believe that the statements therein made were based on information gained by attending this hearing. The report is not based on the hearing, but if not purely imaginary must have been based on statements made by Martha and her stepfather, John Axe. To substantiate this statement I attach hereto a complete transcript of the evidence, statement of counsel and the court, of the hearing which Gertrude Bonnice attended. As Gertrude Bonnice stated in her report, that to satisfy herself she went to Vinita and visited Martha and had hours of conversation with her. In this report Gertrude Bonnice stated "That instead of her weekly allowance of \$75 she was told she had no money. Mr. Hill let her have \$1.50 and sometimes as much as \$2.50, claiming it was a personal loan to her."

This statement is absolutely false, as shown by the record. The report on file in the county court of Osage County, accessible to Gertrude Bonnice for examination and being record evidence of the facts, shows, as stated above, that during the year of which Gertrude Bonnice speaks Martha received in cash, to be by her expended, the sum of \$2,639.10. That in addition the guardian paid bills contracted by her for groceries and other necessities the sum of \$1,142.59, and paid her medical bills in the sum of \$289, making a total of \$4,070.69.

The Bonnice report further states that a gas bill for eight months for \$2.750 was allowed and paid. The records in the county court of the transactions of

Martha's guardian, available to Gertrude Bonnice, are direct contradictions of this statement. No such bill was ever presented, allowed or paid.

This is a case where guardianship of Martha is absolutely necessary, for the proper care of both Martha and her estate. But for the guardian, both Martha and her estate would be absolutely and completely dominated by her stepfather and his associates, and all of Martha's large income dissipated.

The figures herein given are compiled from the official records now on file in the county court of Osage County, Okla., and from a transcript of the hearings before the county court, investigating the sale of the lands by Martha and reconveyance to her. I am not attorney for Martha or for her guardian or anyone else interested in this case, and I am not personally interested in the case in any way, but I am an attorney and have been practicing my profession in Osage County, Okla., for nearly 19 years.

Respectfully submitted.

H. P. WHITE.

In the county court in and for Osage County, State of Oklahoma. In the matter of the guardianship of Martha To-wah-a-he Roberts. No. 1688.

HEARING ON PETITION TO TRANSFER

Now, on this the 19th day of November, 1923, this matter comes on for hearing. There appearing Martha Washington To-wah-a-he Roberts by her attorney, T. A. Chandler, J. M. Humphreys as attorney for J. George Wright, and L. T. Hill, guardian in person and by his attorneys, G. K. Sutherland and Sturgell & Cornett, thereupon the following proceedings are had:

Mr. CHANDLER. We now offer in evidence the roll of Martha Washington, now Martha Roberts, marked "Petitioner's Exhibit A," and ask that the same be admitted and made a part of this record.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial.

The COURT. Objection sustained. Exception allowed.

Thereupon W. M. Sams is duly sworn to speak the truth, the whole truth, and nothing but the truth, and testifies as follows:

Examination Mr. CHANDLER:

Q. State your name.—A. W. M. Sams.

Q. Where do you reside?—A. Vinita.

Q. What position, if any, are you holding at the present time?—A. United States probate attorney for the first probate district.

Q. Do you know Martha Washington Roberts?—A. Yes, sir.

Q. How long have you known her?—A. About 12 or 15 years, I should judge.

Q. When you first knew her where did she live?—A. Near White Oak, in Craig County.

Q. Do you know whether she is a Cherokee restricted Indian or not?—A. Yes; she is.

Mr. STURGELL. Objected to as not responsive to the question. I think that part of the answer "Yes; she is" should be stricken from the record as not responsive.

The COURT. Objection sustained; the answer should be stricken.

Do you know whether she is a Cherokee Indian or not?

A. Yes, sir.

Mr. CHANDLER. Is she?

A. Yes, sir.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial as to whether she is a Cherokee Indian or not, so far as the issues of this case are concerned.

The COURT. Objection sustained. Exceptions allowed.

Q. Mr. Sams, as probate attorney, has Martha Washington come and seen you a short time ago?—A. Yes, sir.

Q. About when?—A. The first time she called I think was in April this year—1923.

Q. Will you state to the court what complaint she had at that time?—A. She was complaining of not receiving funds from her guardian and wanted me to assist her in having her guardian discharged.

Q. That was the first time she called on you?—A. Yes, sir.

Q. Do you know how long she had been residing at that time in Craig County?—A. No; I don't.

Q. Do you know when she came to Craig County this last time?—A. No; I don't know the exact time she came.

Q. When was the next time she called on you?—A. I think in August of this year.

Q. Will you please tell the court what happened at that time?—A. At that time she claimed she was getting no money from her guardian and offered me a letter from her guardian which informed her that she would receive no funds as long as she remained in that county; she appealed to me to get funds for her own living and for her sick child at that time.

Q. Have you that letter with you?—A. Yes, sir.

Q. This is the letter which she brought to you?—A. Yes, sir.

Mr. CHANDLER. We now offer the letter as petitioner's Exhibit B.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial, tending to prove or disapprove no issues in this case. This is a petition for removal from one jurisdiction to another jurisdiction.

The COURT. Sustained, unless you are seeking to remove the guardian.

Mr. CHANDLER. We are not seeking to remove him at the present time. One of the purposes is to show that the guardian recognizes the fact that she is living in Craig County and is now at that place. The letter itself shows that.

Mr. SUTHERLAND. It is a well-established rule of law in this State that the guardian has the right to establish the domicile of his ward.

Mr. CHANDLER. I am surprised that he will state such a thing; the court will take notice that the order only appoints him guardian of the estate and not of the person.

Mr. STURGELL. You will see that the original order in this case was an order appointing Mr. Westbrook and by some strange coincidence when the order appears in this court in this case the word "person" is stricken out, but the recorded original order states "guardian of the person and estate" and appointing Mr. Westbrook such guardian.

Mr. CHANDLER. Object to the statement; the original order does not state any such thing.

Mr. HUMPHREYS. This letter is only in fact to show that she has changed her domicile.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial. Section 6587 of the Oklahoma statutes reads as follows: "A guardian of the person is charged with the custody of his ward, and must look to his support, health, and education; he may fix his place of residence at any place within the State, but not elsewhere." Now, the fact I am challenging is this order. I would like to have the original order appointing Mr. Westbrook as it is recorded and as it appeared at the time it was recorded.

(The court allows the letter in the record for what it is worth.)

Mr. STURGELL. To which we except.

Q. Proceed, Mr. Sams; what other conversation did you and the girl have?—

A. In the same conversation she complained that all of her property has been taken away from her by writ of replevin directed against her father, John Axe Washington, and an examination of the records of Craig County shows that to be a fact.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial, the proceeding in that county over there have nothing to do with the transfer of this case.

The COURT. Objection overruled.

Mr. STURGELL. We move to strike that part of the testimony with reference to the record in Craig County and with reference to the replevin action; the record is the best evidence.

The COURT. Objection sustained and the testimony in reference to the record is stricken.

Mr. CHANDLER. We now offer in evidence the petition of replevin marked "Petitioner's Exhibit C" and the order marked "Petitioner's Exhibit D."

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial, and tends to prove no issues in this case. For the purpose of the record we will admit that John Axe Washington removed certain property from Osage County and that it was necessary to a petition to replevin filed and bring it back to Osage County.

The COURT. Objection sustained.

Mr. CHANDLER. If the court please, this petition recites that is the property of Martha Washington Roberts and that she is the owner of that property, and we wish to show by offering this not only the records of Osage County but also by reason of his acts the guardian has deprived petitioner of her livelihood and

means of support, and with the enormous estate that she has here and that with the distance she is from here the court can't look after her and by reason of that she is thrown upon charity and upon the people of Craig County to take care of her although—

The COURT. You show the court what you are offering to show and I will remove the guardian, but I don't believe it will be grounds to remove the guardian.

Mr. STURGELL. If this ward has been removed to Craig County in good faith, and it is to the best interest of this estate, then the court may or may not transfer the case to that county. The facts in this case will show that Martha Washington was the widow of To-wah-a-he. To-wah-a-he was a very rich Osage Indian, possessed of lands and a large income in Osage County. Martha and John Axe Washington, her father, through the instrumentality of certain attorneys and clients, immediately proceeded upon the death of To-wah-a-he to sell all of the lands belonging to this estate.

Mr. CHANDLER. I object to that statement.

The COURT. You might reserve your statement until after they offer their testimony.

Mr. CHANDLER. If the court please, will you overrule the objection to the admission of these two exhibits?

The COURT. Objection sustained. The court holds that the facts which counsel offer to prove to the court are grounds for the removal of the guardian but not grounds for transfer.

Mr. CHANDLER. To which we except. At this point we ask that the original journal entry in this case be identified as petitioner's Exhibit E, which was signed by the learned counsel for the guardian in this case and goes to prove that he was appointed guardian of the estate only and not of her person, and she has an absolute right to establish her own residence.

Mr. STURGELL. We ask that a subpoena duces tecum be issued for the clerk of the court to bring the original order and letters of guardianship of Bert Westbrook.

Mr. CHANDLER. What I am trying to get before the court is this: This order states "It is therefore considered, ordered, and decreed by the court that B. L. Westbrook be, and he is hereby, appointed guardian of the estate of the said Martha Washington To-wah-e-he Roberts, and it is further ordered that said guardian file a bond in the sum of \$10,000."

The COURT. I will examine the order before we get through.

Q. What further conversation did you have, Mr. Sams?—A. She complained that the writ was not served on her father—her father was not in the county—but the property was taken from her under that writ.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial; does not tend to prove any of the issues in this case.

The COURT. Overruled. Exceptions allowed.

Q. In further conversation did she make any statements about the guardian not making her an allowance?—A. Yes; she complained very bitterly; she had a very sick child which afterward died.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial. Not tending to prove or disapprove any of the issues in this case.

Mr. CHANDLER. We wish to state that we want to show that the reason of the guardian depriving her of her estate, that she was left destitute over at Vinita, that on account of her home being 100 miles from here and on account of the sickness of her two children she was unable to make the trip over here to complain to you as judge of this court that her guardian was not complying with the order of this court and was not furnishing her with sustenance to live upon, not furnishing her with the allowance that the court fixed for herself and her two children; for that reason we think she should be near a judge to whom she might go and complain if the guardian was not doing as the court ordered, and that is one of the main reasons that should appeal to your honor in your decision in this case. We think all these facts should be brought before you so you could thoroughly understand the condition of this guardianship matter.

The COURT. Objection overruled. Exception allowed.

Mr. STURGELL. Now, if the court please, you can very easily see where this is leading. Here comes in attorneys with sentiment and go into what purports to be the best interest of this girl and is not the true situation in this case, and when we get through with this case we will show this kind of evidence is not for the purpose of showing her domicile in good faith over there. I feel that we should clear this record as to whether this girl is domiciled in good faith or domiciled there by John Axe Washington, whom we have had to fight from the beginning of this

record until this time, because he does waste her sustenance and is attempting to again. That is, I think, the real cause of this action.

Q. Mr. Sams, will you state the facts she told you, and she told you about whether she was being taken care of or not?—A. She complained that she had not received any allowance from her guardian and exhibited the local newspaper in which the notice was running not to extend credit to her, and stated that on that account she had been unable to receive medical aid for her child; finally she appealed to a negro doctor whom she thought would be the only one she could get; he treated the child for awhile and when he saw this notice he refused to treat the child further.

Mr. STURGELL. Objected to as hearsay and highly prejudicial and is proper in a hearing for removal of guardian but not proper to be introduced in a case of transfer.

Q. Do you know of your own knowledge that the doctors in Vinita by acts of this guardian have refused to look after the needs of this sick child?—A. I know what that doctor said about it and I saw the notice myself.

Q. Do you know the doctor had refused to look after this sick child?—A. He told me that.

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial, and move that it be stricken from the record.

The Court. Objection overruled.

Mr. SUTHERLAND. I think he has made that statement about a dozen times.

Mr. CHANDLER. I want the court to know the facts.

The Court. Objection sustained. Exceptions allowed.

Q. Mr. Sams, was it necessary for you to get groceries for the ward, this petitioner?

Mr. STURGELL. Objected to as irrelevant, incompetent, and immaterial; tends to prove no issues in this case.

The Court. Objection overruled. Exceptions allowed.

A. Yes; it was.

Q. You don't know of your own knowledge how long Martha Washington has been living in Craig County?—A. No; I don't. This April is the first time she spoke to me. If I am correct about it, she had a matter pending before this court at that time. I think that was April of this year.

Examination by Mr. STURGELL:

Q. Mrs. Sams, you are acquainted with John Axe Washington, are you not?—A. Yes, sir.

Q. At the time mentioned when she called on you was Martha Washington alone or was she with John Axe Washington?—A. Alone.

Q. Did John Axe Washington come to see you with her any times?—A. Yes; a couple of times.

Q. John Axe Washington came alone to see you several times, did he not?—A. I don't think so until after this matter was filed; I don't remember of him being alone.

Q. When you first knew of this particular occasion, do you know where he resides now?—A. Yes, sir.

Q. Where is he residing?—A. Vinita, so he told me.

Q. You don't know, as a matter of fact, whether he is residing out near White Oak?—A. At the time referred to he was not; I went out to see the sick child and John Axe Washington was there.

Q. How long have you known John Axe Washington?—A. Twelve or fifteen years.

Q. Are you acquainted with his reputation for being a law-abiding citizen and whether he uses intoxicating liquor, in the community in which he resides?—A. I know his reputation; yes.

Q. What is his reputation?—A. The reputation of a law-abiding citizen. I never heard it questioned; he is addicted to the use of intoxicating liquor; I think that is his reputation.

Q. That he is a drunkard?—A. Yes, sir.

Q. Did Martha Washington report to you that she had not received any money from her guardian at all while over there?—A. That is my recollection.

Q. That she had not received any money?—A. That is the way I remember it now. If you will permit me to refer to a copy of the letter I sent to Washington—

Q. Are you acquainted at the Farmers State Bank of Vinita?—A. Yes, sir.

Q. Are you acquainted with the cashier?—A. Yes, sir.

Q. Did you see him during February of this year and talk to him about Martha?—A. I think I did.

Q. Did he inform you he had received \$100 on the 22d day of February for Martha Washington?—A. I don't think so.

Q. Then, if the records show that Martha Washington received \$100 from the Farmers State Bank of Vinita along about February, and received \$75 a week each week until after August of this year, her statements to you would be false would they not?—A. Well, I don't remember; I can tell you by referring to this letter.

Q. You stated she told you she did not receive any money?—A. Yes; I think I am correct about that.

Q. Then, if the records disclose that she did actually receive this money, from her conversations with you her statements would be false?—A. They might be and they might not be.

Q. From your evidence you put into the record here a few moments ago.—A. Yes, sir.

Q. If the record discloses that she did in fact receive money during that period of time amounting to \$75 a week, then her statements to you as recorded by your testimony would be false?—A. If that is the record in the case my statement is incorrect, because here is what I should have said, "That she has not been receiving this amount" is what I should have said, if I said she had not received any money.

Q. So you want to correct that?—A. I want to correct that to show she said she had been allowed \$75 a week by the county court of this county and had not been receiving this money.

Q. When was that statement made?—A. The 29th day of September.

Q. Of this year?—A. Yes, sir.

Q. Do you know from your conversation with Martha and John Axe Washington whether she had been receiving her weekly allowance up to August of this year?—A. I do not.

Q. Then your statements made by you in your examination in chief obtain only to what she told you in September of this year?—A. I think that is the first time she made complaint.

Q. And at the time she made that statement to you had or had not this proceeding been filed in this court?—A. For which?

Q. For the transfer of the papers to your county?—A. I am inclined to think not.

Q. Do you know anything about the proceedings filed in March of this year?—A. She told me; yes.

Q. Did she tell you about a deal she made with attorneys in Tulsa to attempt to have the guardianship transferred to Tulsa County?—A. No; she didn't.

Q. Did she tell you anything of an attempt to transfer the matter back to Washington County, her former residence?

Mr. CHANDLER. We object to that.

The COURT. Overruled.

A. She told me of this prior proceeding in Osage County and the one to remove the guardian.

Q. I believe you said you have known her 12 or 15 years.—A. Yes, sir.

Q. Do you know where their lands are located, allottees?—A. John Axe Washington has not land in the Five Civilized Tribes; I know where Martha's allotment is located.

Q. In what county is it located?—A. Washington, from what she told me.

Q. Do you know Martha Washington had a guardian in Washington County before she moved to Osage County?—A. She told me she did.

Q. Then, if Martha Washington was living in Washington County six years ago, then her original domicile would not be in Craig County; is that true?—A. Her original domicile was Craig County, because she was allotted there, allotted as a Shawnee.

Q. She was allotted and later located there?—A. Yes; I think so.

Q. Her homestead allotment was in Washington County?—A. I think so.

Q. And they moved there about when?—A. Moved there when she was a small child.

Q. And lived there until they moved to Osage County and she became the wife of To-wah-e-he?—A. I don't think so. I think they have always claimed the home was in Craig County, near the Beaver place.

Q. She didn't tell you she attempted to transfer this matter to Tulsa?—A. No, sir.

Q. And the time she told you she was not getting her money was in September of this year?—A. Yes; I am inclined to think since refreshing my memory that was about the date of the complaint.

Q. Do you know of her receiving \$250 in September or the 1st of October?—A. No; I don't.

Mr. CHANDLER. She didn't receive it, either.

Q. You are tribal attorney over there, are you?—A. Yes; for that district.

Q. Are you also guardian for some Cherokee Indians?—A. No, sir.

Q. Any Indians?—A. Yes; guardian for one.

Q. Who is that one?—A. Maude Lee Mudd.

Q. Maude Lee Mudd is an Osage Indian, is she not?—A. Half Seneca and half Osage, unallotted.

Q. The girl who has had so much notoriety over the Beaver estate?—A. Yes, sir.

Q. Who are your attorneys in that case?—A. Mr. Chandler is one and Mr. Fitzgerald at Miami.

Examination by Mr. CHANDLER:

Q. You was asked the question awhile ago if the allotment and homestead allotment of Martha Washington was not taken in Washington County; in allotting the members of the Five Civilized Tribes were the allotments always taken where the residence was?—A. No, sir.

Q. An Indian might live in Adair County and have an allotment in Washington County, might he not?

Mr. STRUGELL. Objected to as immaterial.

The COURT. Objection overruled.

A. Many of them were so allotted; yes, sir.

Q. When you referred to her original residence in Craig County, that was before she moved from Craig County to Washington County and to this county, was it not?—A. Yes, sir.

Q. Her original residence up from the time you knew her until she went to Washington County was in White Oak, was it not?—A. Yes, sir.

(Witness dismissed.)

J. S. MARTIN, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. CHANDLER:

Q. State your name.—A. J. S. Martin.

Q. Where do you reside?—A. Vinita, Okla.

Q. About the 1st of February, 1923, did you have occasion to furnish a home for Martha Washington?—A. Yes, sir.

Q. Where was it?—A. At White Oak, west of Vinita.

Q. In Craig County?—A. Yes, sir.

Q. Do you know whether Martha Washington has been living there or in Vinita since that date?—A. Yes, sir.

Q. Has she?—A. She has.

Q. Does she claim that as her home?—A. She does.

Q. Has she been living there continuously since about the 1st of February this year?—A. Yes, sir.

(Witness dismissed.)

Petitioner rests.

Comes now the guardian, L. T. Hill, and demurs to the evidence of the applicant for the reason that same is irrelevant, incompetent, and immaterial and is not sufficient to establish the factum of the allegations; that the issues as they are not joined is to the effect and the allegations of the petition attempts to show that Martha Washington and her guardian have moved and become domiciled in Craig County and that it is for the best interest of the applicant to transfer all the papers to Craig County; that there is not authority of law to authorize the transfer of papers in incompetent cases to any other county than that of the domicile of the guardian; the record also shows that all of the estate of Martha Washington is in Osage County.

The COURT. That is what I want to know.

Mr. SUTHERLAND. She has one and a half Osage estate in this county.

Mr. CHANDLER. We admit that all the property except her allotment in Washington County, Okla., is in this county, but that her residence, her legal residence, we contend is in Craig County. We admit she has no property by reason of the writ of replevin; all her property in Craig County was taken away from her and brought back to Osage County.

The Court. The demurrer to the evidence is sustained. The motion to transfer is overruled.

Mr. CHANDLER. Comes now the petitioner and gives notice in open court of appeal to the district court of Osage County, Okla.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thomas Leahy, court clerk, in and for the county and State aforesaid, do hereby certify that the instrument hereto attached is a full, true, and correct copy of original transcript as the same now appears of record at this office.

Witness my hand and seal said court at Pawhuska, Okla., on this 8th day of March, 1924.

THOS. LEAHY, Court Clerk.
By NELLE L. SONNICHSEN, Deputy.

Case No. 1688. In the matter of the guardianship of Martha Washington Roberts, an incompetent

The affiant, G. K. Sutherland, of lawful age, being duly sworn upon his oath, states that he is now engaged in the practice of law in the town of Hominy, Osage County, Okla., having been located at Hominy in the practice of law since statehood, and that he is personally acquainted with Martha Washington Roberts, formerly Martha To-wah-he, and that he is acquainted with the history of her marriage to To-wah-he in the year 1914, and was personally acquainted with Martha Washington Roberts and To-wah-he at that time; and that he is personally acquainted with John Axe Washington and his wife, having known them since about the year 1914; and that his principle law practice is probate business and Indian matters.

Soon after the marriage of Martha Washington Roberts to To-wah-he, he, To-wah-he, died in the year 1916, leaving a will disposing of all of his property to his wife, Martha To-wah-he. And after the death of To-wah-he and before the appointment of a guardian, John Axe Washington proceeded to have Martha To-wah-he, now Roberts, to sell all the lands taken by will and inherited by Martha from To-wah-he to one Luella B. Harris, and John Axe Washington and his wife and Martha proceeded to dissipate the funds received therefrom, and soon after they became broke and came into the county court of Osage County, Okla., and had a guardian appointed for her because she was a minor.

The court appointed an employee of the Osage Indian agency, one L. C. Tyner, who took charge of the estate. I think the appointment was made during the year of 1916, and the said L. C. Tyner continued to act as guardian until the year of 1920, when B. L. Westbrook was appointed as guardian, and he continued to act as guardian until May, 1921, and L. T. Hill was appointed guardian of the said Martha Washington Roberts. The said L. T. Hill was personally solicited by the said Martha Washington Roberts and her father and mother, as well as her husband, Sam Roberts, who was living with her at that time, to accept this guardianship and take charge of the property.

During the administratorship of B. L. Westbrook all of the land which had been sold and the money squandered was recovered and she now owns 1,020 acres of land in Osage County, Okla.

That being familiar with this guardianship case from its inception, I am thoroughly convinced that Martha Washington Roberts is an incompetent and unable, unassisted, to care for either her person or her property and that she is under the immediate control of influence of her stepfather, John Axe Washington, and that her parents are incompetent full-blood Indians.

That since the appointment of L. T. Hill as guardian, at the request and solicitation of Martha and her stepfather and her mother, he improved what is known as the To-wah-he home, about $4\frac{1}{2}$ miles east of Hominy, and made them a comfortable home with a good barn, chicken house, well house, modern cement cellar, and has improved the place by placing a hog fence and other three-wire fences, making one of the best improved houses in Osage County, Okla. Mr. Hill also purchased and stocked this farm with milch cows, hogs, and poultry and a team of mules and a team of mares and all the necessary implements to cultivate 120 acres of land. All of these improvements and stock was purchased under order of the county court of Osage County, Okla. In the fall of 1922 he purchased a new Packard automobile for the family at a cost of \$3,120.77.

That John Axe Washington is a habitual drunkard and is a man of strong will and controls and dominates Martha, who is a very modest kind of a girl, and

she could be managed alone; the guardian would have no trouble with her, as her wants are simple and reasonable.

I have been informed that John Axe Washington, her stepfather, being dissatisfied and told by other associates of his class that if they would get out of Osage County they could get all of Martha's money, and soon after the first of the year 1923 John Axe Washington proceeded to move Martha and his wife to Tulsa, and tried to secure a lawyer to come to Pawhuska to have the case transferred to Tulsa County, but, being unable to accomplish anything, soon moved to Vinita in Craig County, where they employed an attorney by the name of Preston S. Davis, who at one time had been district judge in that county. Preston S. Davis came to Pawhuska and filed his application, which was signed by Martha Washington Roberts, Rosa Washington, and John Axe Washington and Joe Washington, to have fact of the restoration of Martha Washington Roberts capacity judicially determined. The same was filed in the county court of this county on March 7, 1923, in which application he also asks that this case be transferred to Vinita, in Craig County, and after Mr. Davis making investigation as to the condition in which Martha had been living, and finding out she had been domiciled in Osage County since 1914, and that all of her property was in Osage County, and that she had a well provided and equipped home, and that at that time had the farm well stocked and the house furnished, and that everything she needed on the farm, Mr. Davis made up his mind at that time that it was not for the best interest of Martha to have her property transferred to Vinita or restored to competency and withdrew from the case.

Some time after that John Axe Washington and his associates, with Martha Washington Roberts and others, employed a firm of attorneys in Vinita, in which Hon. T. A. Chandler was associated, to represent her, and John Axe Washington then brought trucks and wagons from Vinita to the farm while Mr. Hill was away, and where the guardian had the personal property of Martha Washington Roberts, and by force of arms took the cattle, hogs, horses, and poultry away from the farm to Vinita. As soon as the guardian returned and learned that the property had been removed, he replevined the same and found that John had sold some of the hogs, killed some more of them, and killed and eaten up the chickens, and disposed of a wagon that the guardian never has recovered.

I have been informed that the guardian went to Vinita in person and directed the recovery of this property. He found that the hogs and horses were uncared for during the hottest part of the summer and literally starving to death and famished for water. Martha Washington Roberts and her father and mother and brother and her own two young children were living in what is known in that vicinity as White Oak Hills. They were residing in a two-room log cabin which was entirely destitute of furniture with the exception of one bed, a sewing machine, and one or two chairs. They were cooking and preparing their meals on a kitchen range located in the open yard, the range having been removed from the farm in Osage County at the time the livestock was taken.

The moral conditions surrounding Martha Washington Roberts while living at this place were extremely undesirable. Statements of their immediate neighbors and residents, told Mr. Hill and others accompanying him on his trip there to recover said property, were to the effect that John Axe Washington liked to live there because it was among poor Indians over whom he did have domination. It was stated that liquor was extremely plentiful and frequently John Axe Washington would get drunk and run all the other Indians off the hill.

Mr. Hill also found that this property had been mortgaged by John Axe Washington to J. R. Campbell, of Vinita, for the sum of \$40.

It was about this time that one William Sims, United States probate attorney, had himself appointed guardian ad litem to represent Martha in these suits. The guardian had to file to recover this property, and also Mr. Sims came to Pawhuska in an attempt to have this case transferred to Vinita and one of his friends appointed guardian of Martha Washington Roberts.

The affiant further states that he has represented Mr. Hill in all of this guardianship matter, except during the time in which he had to replevy this property he was away on a vacation and he employed G. B. Sturgell and Carey Caldwell to represent him in those actions. And also after my return, Mr. Sturgell was retained to assist against the removal of this case to Craig County.

I have had frequent conference with Mr. Hill and at all times in reference to this estate, and I find Mr. Hill is a young man with exceptional character. He has handled this estate exceedingly well, but has had to fight John Axe Washington from soon after he was appointed down to the present time, and that Mr. Hill has made reasonable effort to provide a comfortable home for them and to provide all the necessities for the same, and that he has preserved this estate

and now has on hand over \$15,000 in real estate loans besides an investment of about \$2,500 on the home place and \$2,000 on another improved place.

Mr. Hill at the time he was appointed only received approximately \$1,700 from his predecessor.

After investigating this matter thoroughly and being acquainted with all the parties concerned, I find that L. T. Hill's record as guardian is exceptionally good; that he has in all respects acted judiciously in his work in the Martha Washington Roberts case, and that John Axe Washington is a drunken, incompetent, shiftless Indian, who, if permitted to do so, will dissipate and squander the estate of his stepdaughter, and that L. T. Hill has so far prevented the same.

Further affiant saith not.

Subscribed and sworn to before me this the — day of February, 1924.

_____, Notary Public.

In the matter of the guardianship of Martha Washington Roberts, an incompetent. No. 1688.

The affiant, G. B. Sturgell, of lawful age, being duly sworn, upon oath states that up to June 15, 1923, and from January 1, 1919, he was the duly elected, qualified, and acting county judge of Osage County; that as such county judge he had personal observation of the conditions of the estate of Martha Washington Roberts, formerly Martha To-wah-he, and he is acquainted with the history of the case from its inception, having the same reviewed from time to time in hearings had before him, and after having examined John Axe Washington and his wife in open court, and after having heard and observed Martha To-wah-he Roberts in open court at divers and sundry hearings had, I can say that I am acquainted with the person of Martha Washington Roberts and of her parents.

I find from the records that Martha Washington was a girl less than 18 years of age when she married old man To-wah-he in 1914; To-wah-he died in 1916, leaving the bulk of his estate to Martha. After the death of To-wah-he and before the appointment of a guardian, John Axe Washington proceeded to sell all of the lands inherited by Martha from To-wah-he to one Luella Harris, and John and his wife and Martha proceeded to dissipate the funds received therefrom, and when they became broke then came into the county court of Osage County and had a guardian appointed for her because she was a minor.

The court appointed a guardian in the person of one of the employees of the Osage Indian Agency, one L. C. Tyner, who took charge of her estate and handled it. This appointment took place in August, 1916; L. C. Tyner acted as guardian of Martha Washington Roberts up to the 15th day of March, 1920, when a petition was filed with the following allegations: "Your petitioner further alleges and avers that the said Martha Washington To-wah-he is of unsound mind and mentally incompetent to care for her person and estate; that she is of very weak mind and is incapable of conserving or protecting her property, and unable, unassisted, to care for either her person or her property; that she is dominated by her parents, and under the absolute control of her parents, and does whatever her parents direct her to do; that her parents are incompetent full-blood Indians, and heretofore have sold her lands practically for nothing, and have induced the said Martha To-wah-he to stand idly by and permit her name to be signed by others to deeds of conveyance, the parents taking the money and squandering it."

That upon the hearing the allegations were established in my presence by competent testimony and Martha Washington was adjudged to be an incompetent person and a guardian appointed for her. Suits were instituted to cancel the deeds given, pursuant to these allegations, and the land was recovered. L. C. Tyner resigned when he left the Osage Agency and B. L. Westbrook was appointed and it was during B. L. Westbrook's incumbency that the lands were recovered for Martha Washington Roberts. B. L. Westbrook served until June 10, 1921 and he resigned and L. T. Hill was appointed guardian.

L. T. Hill is a young man of exceptional character; has handled the estate of Martha Washington Roberts exceedingly well, but has had to fight John Axe Washington from the very beginning of his guardianship down to the present time. He has prepared for Martha Washington a rural home on her farm, with all the conveniences of a modern home, and at her request purchased horses sufficient to farm the lands; purchased a few cows, some thoroughbred hogs and poultry, and placed it on the farm for Martha's use. In the meantime, Martha

wanted a car and he purchased that. He has accumulated a large amount of money to the credit of Martha and has paid her a regular allowance of \$75 a week. John Axe Washington is an habitual drunkard; a man of strongwill, and controls and dominates Martha, who is a timid modest kind of a girl, and if she could be managed alone the guardian would have no trouble with her.

John and his wife and Martha left their farm and went to Tulsa, Okla., and to Bartlesville, Okla., and at each place tried to procure attorneys to get their property out of Osage County, but failed; then they went to Vinita, Okla., and employed one Preston C. Davis, who at one time had been district judge in that county. Preston C. Davis came to Pawhuska and filed his application for a transfer of all the papers and the guardianship case to Vinita. After making a personal investigation of the condition under which Martha Washington had been living and finding out that she had been domiciled in Osage County since 1914; that all her property was here and she had a well equipped home; that she had livestock on the farm; a house furnished and everything that she would need on the farm; he made up his mind at that time it was not to the best interest of Martha Washington Roberts to have property transferred to Vinita, and withdrew from the case.

Soon after that Martha Washington Roberts employed a firm of attorneys in Vinita, of which Bert Chandler is a member; John Axe Washington then brought trucks and wagons from Vinita to the farm, where the guardian had the personal property of Martha Washington Roberts and by force and arms took the hogs, horses, cattle, and poultry away from the farm to Vinita, Okla.

As soon as the guardian learned that he had removed the property he replevined the same and found that John Axe Washington had sold some of the hogs and had killed some more of the hogs; had killed and eaten up the poultry, and had disposed of a wagon that the guardian never could recover. The balance of the property he recovered and brought back to Osage County, the domicile of his ward, and where the other property was kept.

It was then that William Sims made his appearance in the case with an application to be appointed guardian of the person and estate of Martha Washington Roberts; had himself appointed guardian ad litem and came to Pawhuska and attempted to have the matter transferred to Vinita from the Osage County jurisdiction. I was employed especially to appear in this case and present the facts as best I knew how to the court of Osage County, where the jurisdiction originally was fixed. The court sustained the contentions of the guardian, L. T. Hill, and refused to permit the transfer of the papers; and just before going into the trial of this case to have the matter transferred, Bert Chandler was in my office in Pawhuska, and he made the statement to me that he thought that he should have some recognition in this case, and if he did not get such recognition that he would fight the guardianships in Osage County. I refused to concede anything, as I had no authority to concede anything, except that it was my purpose, and has been, and always will be, to practice law along the lines of law as established, upholding the laws of Congress and the laws of the State of Oklahoma, and preserving in every way the property that rightfully belongs to the Indians, whether they are Osages or other tribal members.

After investigating all the records I find that L. T. Hill's record is an enviable one; that he has acted judiciously in his work in the Martha Washington Roberts case; that John Axe Washington is a drunken, incompetent, shiftless, extravagant Indian, who, if permitted to do so, will undoubtedly dissipate and squander the estate of his daughter; that L. T. Hill has prevented the same.

Further affiant saith not.

Subscribed and sworn to before me this the 11th day of February, 1924.

Deputy Court Clerk.

Mr. WILSON. I want to read another matter in connection with Charles Drum which was dealt with somewhat in the House hearings.
[Reading:]

AFFIDAVIT

STATE OF OKLAHOMA, Osage County, ss:

J. W. McCool, of lawful age, being first duly sworn upon oath, states: That on the 17th day of January, 1914, I was by the court of Osage County, Okla., appointed guardian for Charles Drum (Wah-tsa-ki-he-hak), Osage allottee No.

267, a full-blood restricted Osage Indian, since which time I have acted as guardian for said Charles Drum, and I am now his guardian.

At the time of my appointment as guardian for Charles Drum he was about 44 years of age, blind, and had two living children, Agnes Drum Rogers and Wah-to-sah or Lucy Drum. Both Charles Drum and his daughter Agnes Drum were blind as a result of syphilis. I had both, Charles Drum and his daughter, Agnes Drum, treated for syphilis during the time I was guardian for both of them; another guardian has since been appointed for Agnes Drum Rogers, and I have continued to have Charles Drum treated.

On or about the 15th day of February, 1918, Charles Drum married a white girl, Ethel Lindsey, who was at that time about 18 years of age, to whom he transmitted syphilis and four children have resulted from said marriage, two of whom have been born dead, due to their syphilitic condition and the two living children are both syphilitic. Both the county judge and I opposed the marriage of Charles Drum to Ethel Lindsey but they ran away from home and were married without the consent or knowledge of the county judge or myself. After the marriage of Charles Drum to Ethel Lindsey and the birth of these children, I increased my efforts to have my ward and his family cured of syphilis, and I have had various physicians in the city of Pawhuska, Okla., to give my ward and his family treatments for this disease, but I found that my efforts in this direction were not accomplishing the results which I wished for the reason that Charles Drum and his family would not take their treatments regularly and for the further reason that they would hardly become well of this disease until they had received a new infection.

On or about the 8th day of January, 1921, acting on the advice of the county judge of Osage County, Okla., I took Charles Drum and his family to Oklahoma City, Okla., and had them confined under guard in the Oklahoma State University Hospital and placed them under the care of Dr. Robert S. Love, a noted specialist in venereal diseases. At the time I took Charles Drum and his family to Oklahoma State University Hospital, and had them confined all the members of his family were in a bad condition and syphilitic sores were in evidence on their faces and their bodies. On or about the 30th day of April, 1922, this family was dismissed by the Oklahoma State University Hospital, but they remained in Oklahoma City and continued to take treatments of Doctor Love until about the 1st day of May, 1923. When I first took my ward and his family to Oklahoma City, Charles Drum resisted these treatments and it was necessary for me to employ guards to get him into the Oklahoma State University Hospital there, but after he had been in the care of Doctor Love for a while he seemed to realize the need of this treatment and became very submissive and after his release from the hospital and while he was still in Oklahoma City he went to Doctor Love's office regularly for treatment and requested that he be given his treatments. While my ward and his family were in Oklahoma City, I made several trips there to administer to their wants and to do what I could to assist in their treatment. I was in constant communication with Doctor Love and advised with him frequently as to the care of these persons. On the return of Charles Drum and his family to Pawhuska, on or about the 1st day of May, 1923, they were pronounced as nearly well as it is possible to cure people who were in their condition at the time they were placed under Doctor Love's care.

After Charles Drum and his family returned to Pawhuska, they received new infections of both syphilis and gonorrhea. They were treated by several doctors of this city, who found that a tubercular syphilis condition existed in Katherine Drum, 5 years of age, and Charles Drum, jr., 3 years of age, children of Charles Drum, and recommended that this family be sent either to Arizona or New Mexico for treatment. I made the necessary arrangements and sent my ward and his family, consisting of his wife and two small children to Albuquerque, N. Mex., where they are now receiving treatment in the St. Joseph Sanitarium at Albuquerque, N. Mex. I have been to Albuquerque, N. Mex., to look after my ward and his family, and I am advised that Katherine Drum, the 5-year old daughter of Charles Drum, was, on examination, found to be 400 per cent syphilitic and slightly tubercular.

Charles Drum has in addition to his own Osage allotment, two inherited allotments, making the total of three Osage allotments, and he has property in securities and cash, which I have accumulated for him since my appointment as guardian, approximately \$85,000. After the passage of the act of Congress of March 3, 1921, the Osage Indian Agency took the position that I was not permitted to expend over \$4,000 per annum for my ward, and I was continually advised by officials of the Osage Indian Agency that exceptions and objections

would be taken to my accounts and reports if I exceeded this amount of money for expenditures in caring for my ward and his family. On the presentation of claims for treatment of my ward and his family to the county court exceptions have been taken by the Osage Indian Agency to their allowance, on the ground that allowance of these claims would make my expenditures as guardian for Charles Drum exceed \$4,000 per annum. I have always taken the position in the management of the estate of my ward in the care of him and his family that the accumulation of a vast estate for this Indian would be of no benefit to him if I permitted syphilis to kill Charles Drum and his family.

I was advised by reputable physicians that unless Charles Drum was treated that he could not possibly live more than two years. I have given the management of the estate of Charles Drum and the care of his family a great deal of my time and attention, and while the court has been fair in his allowances for my services, I feel that I have earned every dollar that has been paid me for looking after Charles Drum and his family. I shall be glad for any person who is interested in the estate of Charles Drum to investigate in minute detail my handling of it and also would like to have persons who are interested in this matter to inquire of the physicians and other persons familiar with the condition of Charles Drum and his family as to the amount of time and attention I have given this ward and his family.

J. W. McCool.

Subscribed and sworn to before me this 7th day of May, 1924.

[SEAL]

LENA AEMISEGGER, *Notary Public*.

My commission expires September 20, 1926.

AFFIDAVIT AND STATEMENT OF DR. ROBERT S. LOVE RELATIVE TO THE TREATMENT BY HIM OF CHARLES DRUM AND FAMILY, OF PAWUSKA, OKLA.

STATE OF OKLAHOMA, *Oklahoma County*, ss:

Robert S. Love, of Oklahoma City, Okla., being first duly sworn, upon oath deposes and says:

That he is a resident of Oklahoma City, Okla., and has engaged in the practice of medicine in said city since the year 1917; that he is a graduate of the medical department of the University of Tennessee. That he has engaged in the general practice of medicine and more particularly those branches known as urology and syphilology since the year 1909.

Deponent further states that on January 8, 1921, Charles Drum, sr., and family, including his wife, son, Charles Drum, jr., and his daughter, Catherine, came under his observation for examination and treatment; that the examination made by the said Robert S. Love of Charles Drum, sr., showed that he was suffering at that time with an acute gonorrhea infection of the urethra and prostate; that a blood Wassermann test of the said Charles Drum, sr., showed him to have had syphilis, and this was further indicated by numerous skin lesions and a syphilitic liver.

Deponent further states that an immediate treatment of the said Charles Drum, sr., was necessary; that the said Drum was blind, and due to his various ailments was contentious and of mean disposition; that because of these facts and circumstances it was deemed necessary by affiant to confine the patient to an institution, in a room by himself, with a special nurse and a male attendant; that the latter was especially necessary because of the constant desire on the part of Charles Drum, sr., to buy perfumes and corn whisky to be used as a beverage.

Deponent further states that Charles Drum, sr., returned to him for further treatment in the year 1922, and that at that time his symptoms were more pronounced than before, and at that time he had a stricture of the membranous portion of the urethra and also had a chronic prostate; that the said patient at that time was having quite a bit of trouble with his stomach and liver, which was due to the syphilitic infection; that at this time, on account of the severity of the treatments necessary and Charles Drum's disposition, it was found necessary for him to have a male attendant to keep him away from perfumes, corn whisky, and beverages of a similar type.

Deponent further states that in the year 1923 that the said Charles Drum, sr., came to him with symptoms similar to those shown on previous occasions, although not quite so severe, and also with an acute gonorrhea condition which was

then about six weeks old; that due to this condition of the patient it was necessary to give him another series of treatments for the prostate gland; that after this infection had been cured it became necessary to give him another series of treatments, including mercury and salvarsan, for the old, standing leucic condition with which the patient was again suffering.

Deponent further states that when Mrs. Charles Drum, wife of the said Charles Drum, sr., came under his observation for treatment in January, 1921, she was suffering with chronic endometritis; that she was very anemic, had a positive Wassermann, and also a severe median laceration complete.

That due to the condition of the said patient it was necessary for deponent to give the said Mrs. Drum a series of treatments of mercury and salvarsan in the years 1921, 1922, and 1923; that deponent also did a repair of the laceration above described.

Deponent further states that when he last saw the said Mrs. Charles Drum in the year 1923 that there were no symptoms present of any of the former diseases of which she had been suffering and for which she had been treated, and that she had gained several pounds in weight.

Deponent further states that when Charles Drum, jr., came under his observation for treatment in January, 1921, he was suffering with congenital lues, with otitis media, and with gonorrhea ophthalmia; that at said time the child was practically blind and deaf; that on account of the condition and age of the patient said deponent had difficulty in getting him into an institution where he might be properly treated; that the treatment by affiant of the said Charles Drum, jr., consisted of a series of salvarsan and mercury inunctions.

Deponent further states that when the said patient came under his observation in 1921 he showed numerous skin lesions of the face and scalp.

Deponent further states that Charles Drum, jr., came under his observation for treatment in both 1922 and 1923; that after his treatments in 1923 the symptoms of the patient cleared up and he began to grow, gain weight, and have an increased mentality.

Deponent further states that when Catherine Drum, daughter of Charles Drum, came under his observation for treatment in January, 1921, she was suffering from gonorrhea ophthalmia and numerous skin lesions on the face, ears, scalp, and buttocks, which were due to congenital leus; that because of her condition affiant deemed it necessary to confine her in an institution where she could have special care; that affiant gave her a series of treatments; that said patient was likewise given a series of treatments in 1922 and 1923; that at the termination of the treatments in 1923 the symptoms of the patient had cleared up entirely with the exception of a gumotas condition of the lung, which, in the opinion of affiant, will necessitate a treatment for several years in order that same may be entirely eradicated.

Deponent further states that in his opinion and in the opinion of other physicians who do this special kind of work and with whom he has consulted, the entire Drum family should be treated for several years, and that this is especially true of the children; that affiant believes that it would not be anything short of criminal for the Drum family to fail to get and obtain the benefit of further treatments at this time.

Further deponent saith not.

R. S. LOVE, M. D.

Subscribed and sworn to before me, the undersigned notary public, at Oklahoma City, Okla., on this the 8th day of May, 1924.

[SEAL.]

BEATRICE JOHNSTON, Notary Public.

My commission expires April 11, 1928.

STATE OF OKLAHOMA, County of Osage, ss:

H. R. Duncan, of lawful age, being first duly sworn, upon his oath states:

That he is attorney for J. W. McCool, guardian of Wah-tsa-ki-he-kah (Charles Drum), Osage allottee No. 267; that on the 6th day of June, 1923, the semi-annual account of the said J. W. McCool, guardian of Wah-tsa-ki-he-kah, was heard and approved by the county court of Osage County, Okla., at which time J. M. Humphreys, attorney for the superintendent of the Osage Indian Agency, examined the vouchers and securities produced in open court by J. W. McCool and found that one registered United States Liberty bond for \$600 had not been listed on guardian's report with the other securities, but that said registered Liberty bond for \$600 was produced in open court at that time with the other securities, and that notation of the additional registered United States bond for \$600 was made on guardian's report where the securities were listed.

Affiant states that securities and bonds of Wah-tsa-ki-he-kah (Charles Drum) are not kept in the possession of J. W. McCool, but all of said securities and bonds are deposited in a safety deposit box in the Liberty National Bank of Pawhuska, Okla., and that the representative for the Aetna Casualty Co. holds the key thereto; that in making up the accounts and reports of J. W. McCool, guardian of Wah-tsa-ki-he-kah (Charles Drum), this affiant, in company with the representative of the Aetna Casualty Co., takes from said safety deposit box the bonds and securities owned by Charles Drum and lists them on the report of guardian; that in making up guardian's report that was heard on the 6th day of June, 1923, through mistake and inadvertence, this affiant failed to list one registered United States bond for \$600; that said bond was never in the possession of J. W. McCool, but with the other bonds and securities was in the safety deposit box kept by J. W. McCool, guardian of Wah-tsa-ki-he-kah, and when the report of J. W. McCool, guardian of Wah-tsa-ki-he-kah, came on for hearing in the county court said safety deposit box containing all the securities and bonds of guardian of Wah-tsa-ki-he-kah (Charles Drum), was carried to the courthouse, and said bonds and securities were exhibited to the court and to the superintendent of the Osage Indian Agency, and it was there discovered that a registered United States Liberty Bond for \$600 had not been listed on guardian's report.

Affiant further states that said registered United States Liberty Bond for \$600 had been listed on previous reports and the failure to list the same on the report heard on the 6th day of June, 1923, was due to an oversight and mistake which was discovered and immediately corrected at the time of the hearing and it was thoroughly understood and explained to both the county court and the attorney for the Osage Indian Agency; that the failure to list said bond was an oversight and mistake of the attorney in making up the report, and it was also shown that said United States registered bond was at that time with the bonds and securities in the safety deposit box which was produced in open court.

H. R. DUNCAN.

Subscribed and sworn to before me this 7th day of May, 1924.

[SEAL:]

LEAH PACE, Notary Public.

My commission expires December 3, 1927.

MAY 1, 1924.

Name, Wah-tsa-ki-he-kah (Charles Drum), Osage allottee No. 267. Guardian, J. W. McCool.

- (1) Number of headrights of ward, three.
- (2) Date of appointment of guardian, January 17, 1914.
- (3) Debts of ward created prior to guardianship paid since 1921, none.
- (4) Assets of estate:

(a) Cash on hand.....	\$3, 175. 84
(b) Securities.....	87, 900. 00
(c) Property purchased.....	10, 000. 00

J. W. McCool.

Mr. WILSON. Here is another statement similar to some I have read. [Reading:]

LAW OFFICES OF LEAHY, MACDONALD, FILES & GRAY,
Fairfax, Okla., May 9, 1924.

Senator J. W. HARRELD,

Chairman Indian Committee, United States Senate, Washington, D. C.

DEAR SIR: Attention is called by our office to the guardianship of Frederick Redeagle, Osage allottee No. 740.

In April, 1921, a guardian was appointed for Frederick Redeagle, and F. Peyton Glass, of Fairfax, Okla., was appointed as guardian. At this time the man was one of the worst drunkards in Osage County. He had killed two men in wild, reckless driving while on drunken parties. He was diseased and was a source of great trouble to the town of Fairfax by reason of his drunken brawls. He was in debt and had no money saved up for him or in any way invested.

In April, 1924, he testified in the county court of Osage County, Okla., that he had not had a drink for almost two years. That he had helped other Indians to stop drinking. It was shown at this hearing also that he had been cured of his disease and that it was through the effort of his guardian that he

had been cured. The guardian had taken such a personal interest in him that he had taken him to Hot Springs, Ark., and had insisted on his staying there until he was completely cured. That he had also shown the Indian the folly of drinking by holding out all money except for expenses had made it impossible for him to get drunk. He testified that he had been in no trouble scarcely since one year after the guardian was appointed.

The guardian then testified that he had \$18,500 in certificates of deposit; that he had \$14,650 in Government bonds; that he had over \$14,000 in real estate loans, drawing interest at 7 per cent per annum and secured by real estate worth more than twice the amount of the loan, his total assets, with cash on hand, being over \$56,000. This amount of money has been saved.

This is just one sample of where a guardian has done a great good for a ward. It proves that guardians take a personal interest, that their service is positive while that of the department is negative. The guardian seeks to do things for his ward and yet invest his money. The department seeks to prevent the Indian from doing anything and their interest is purely negative.

We might point out another example of where one Osage Indian was allowed to die because no real care was taken. That of Jennie Bigheart, Osage allottee No. 83. This Indian drew three Indian shares and had a large estate. Yet she died of tuberculosis because no attention was given her in the way of personal attention. It has been stated by experts that had personal attention been given her her life might have been preserved for several years. But by reason of the neglect and the negative service of the department she was allowed to die. That is the folly of the neglect of the department, who has so many Indians to look after that they can not give personal attention and must allow many to suffer from neglect that would not otherwise exist.

On the other hand we can point out the example of Pah-se-to-pah, Osage allottee No. 193, of which J. J. Quarles was guardian. This Indian was blind and bedridden. The Indians were too busy running around to take any care of him. The Osage Indian Agency did not have the time to see that he was properly cared for. But J. J. Quarles, his guardian, took an active interest in him. He went to see him often. He kept a man with him night and day to care for his every want and to keep him company, for the other Indians never came near him unless to try and borrow from the old man's allowance. The doctor was instructed to give the best of attention and no unnecessary visits were made because the man in charge called only when the ward was really in pain. Thus was a life prolonged for several years and an Indian allowed to enjoy the last few years of his life because a guardian took personal care. This Indian died leaving no bills, as all had been cared for by his guardian. Jennie Bigheart died leaving numerous bills amounting to several thousand dollars, which could have been prevented by a guardian having charge of her affairs.

Guardians prevent designing persons from imposing upon the Indians. They protect them in all cases and save thousands of dollars that otherwise would be spent foolishly for necessities of life, and yet in excess of what would be reasonable expenditures. The guardianship system has saved thousands of dollars for the Indians. Those having guardians have nice homes and are not allowed to squander their money. Those without guardians squander their money and have no homes worthy of mention.

These matters must be carefully considered by your committee and with a careful investigation there can be no doubt as to the efficiency of the guardianship system for Osage Indians.

Very truly yours,

LEAHY, MACDONALD, FILES & GRAY,
By WALTER L. GRAY.

The CHAIRMAN. This is largely cumulative. Could not you pick out the main cases and put the others in the record?

Mr. WILSON. Yes, sir. I just want to read an extract from the testimony of an Indian for whom guardianship was applied in the county court of Osage County, Rose Star Pratt. This is an examination by Judge Humphreys, and begins at page 23 of the record I have here.

The CHAIRMAN. Who is testifying?

Mr. WILSON. This is the person for whom guardianship was being applied.

The CHAIRMAN. Was it a proceeding attempting to have a guardian appointed?

Mr. WILSON. Yes.

The CHAIRMAN. All right.

Mr. WILSON. It is as follows [reading]:

Q. Rose, who have you talked to about having a guardian appointed after you became 21?—A. Nobody—just myself.

Q. Just yourself?—A. Yes, sir.

Q. Has anyone made you a promise that you would get a car?—A. No, sir.

Q. You know you have money accumulated at the agency.—A. Yes, sir; some.

Q. Well, all the money you have is up there, isn't it?—A. I don't know about that.

Q. That money is not liable to get away from you?—A. No, sir; I don't suppose it is.

Q. You get a thousand dollars quarterly, or \$4,000 a year—don't you think you would like to have all of that?—A. I guess so.

She was under guardianship during her minority, I might interpose.

A. The agency will pay you twice what you have been getting since you were 21 years of age, and pay it to you—you understand that, don't you?—A. Yes, sir.

Q. If you have a guardian appointed you will have to pay your guardian, the court costs, and attorney's fees; knowing that, do you want that to be done?—A. Yes, sir. I had rather have a guardian than the agency.

Q. Can you tell the court why you want that?—A. I think a guardian would take care of me better than the agency would.

Q. Do you think a guardian would take care of you better than the agency?—A. Yes, sir.

Q. You have been under guardianship, haven't you?—A. Yes, sir.

Q. You have never been under the agency?—A. No, sir.

Q. The agency will give you all the money and you can spend it just as you please. The guardian will give you just what he wants you to have.—A. That is what I want.

Q. You don't want the agency?—A. No, sir; I want a guardian.

Q. Let's get this right. If the agency will pay you just like your guardian, that wouldn't suit you at all?—A. No; I had rather have a guardian.

Q. If a guardian is appointed you will have to pay the guardian's fee, the court cost, and attorneys' feet out of your money.—A. I rather pay it than to have the agency.

Q. You rather pay it than to have the agency?—A. Yes, sir.

Q. Now, if the agency would pay you monthly, wouldn't you rather have it that way?—A. I don't want the agency.

Q. Now just tell the court why you want a guardian and why you don't want the agency to handle your business.—A. I think a guardian would treat me better than the agency.

Q. Well, why?—A. Would treat me better.

Q. You have never had the agency to attend to your business have you?—A. I know but the agency—they are pretty hard-boiled up there.

Q. They have to be hard-boiled. That is the reason you don't want them to handle your business, because they are hard-boiled up there. They have to be hard-boiled to handle the situation?—A. Yes, sir.

And then there is other testimony.

Mr. HUMPHREYS. You are offering that record in evidence?

Mr. WILSON. Yes; I am offering it, but particularly that part of it which I read.

Mr. HUMPHREYS. I want that to go in. We demanded a jury. The court refused to let us have a jury, and tried the case himself. We raised the question that there was no testimony in the case justifying the appointment of a guardian. The case was appealed to the district court on the theory stated in the notice, that the court had refused to give us a jury under the Fry bill.

Mr. WILSON. This is one of those cases wherein a jury is not required.

In the County Court of Osage County, State of Oklahoma. In the matter of the guardianship of Rose Star Pratt. No. 2625. Transcript. Appeal taken from the judgment of the County Court of Osage County, State of Oklahoma, to the District Court of Osage County, State of Oklahoma.

Appearances: Rose Star Pratt, and by her attorney, Walter L. Gray; Osage Indian Agency, by its attorney, J. M. Humphreys.

PETITION FOR APPOINTMENT OF GUARDIAN

In County Court. In the matter of the general guardianship of Rose Star Pratt

STATE OF OKLAHOMA, *Osage County, ss.:*

Comes now Rose Star Pratt and George Pratt and show to the court that Rose Star Pratt is a resident of Osage County, State of Oklahoma, and that she is an adult just having attained her twenty-first birthday.

That said Rose Starr Pratt estate of the following general character and value in the county of Osage, State of Oklahoma, to wit: One full Osage Indian estate, consisting of 640 acres of land, together with all payments made to Osage Indians.

That the next of kin and persons having care of said—are George Pratt, husband, Mrs. Little Star, mother.

That petitioner Mrs. Little Star and Rose Star Pratt.

That it is necessary that a general guardian be appointed for said Rose Pratt for the following reasons: That said Rose Pratt has been under guardianship for several years, her parents being under guardianship and her husband as well. That she does not understand business and can not care for her affairs. That she is very defective in eyesight and apparently will be blind in a short while from the condition of her eyes. That she is likely to be imposed upon by scheming persons.

That J. G. Shoun, for whom letters general guardianship are asked to be issued, is a resident of Fairfax, Okla., in said county, having post-office address at Fairfax, Okla.

Wherefore petitioner prays that J. G. Shoun be appointed general guardian of said Rose Star Pratt.

GEORGE PRATT, *Petitioner.*

ROSE PRATT, *Petitioner.*

STATE OF OKLAHOMA, *Osage County, ss.:*

I, the undersigned petitioner, being duly sworn on oath, say that I have read the foregoing petition and know the contents thereof, and that the statements therein contained are true, as I verily believe.

GEORGE PRATT.

Subscribed and sworn to before me this 17th day of April, 1924.

[SEAL.]

W. E. COPELAND, *Notary Public.*

Commission expires July 17, 1926.

(Indorsed:) No. 2625. In the matter of the guardianship of Rose Starr Pratt. Petition for letters of guardianship. County court, Osage County, filed April 18, 1924. Thos. Leahy, court clerk, by D. S. Landrum, deputy. Jury demanded and hearing requested. Service accepted and copy received this 18 day of April, 1924. J. George Wright, superintendent, Osage Agency, by his attorney, J. M. H.

ORDER FOR HEARING PETITION FOR APPOINTMENT OF GUARDIAN

In County Court. In the matter of the guardianship of Rose Star Pratt

STATE OF OKLAHOMA, *Osage County*, ss:

Now, on this 18th day of April, 1924, Rose Star Pratt and George Pratt, having filed in this court their petition showing that it is necessary that a guardian should be appointed for the person and estate of Rose Star Pratt and praying that letters of guardianship be issued to J. G. Shoun:

It is ordered that said petition be, and hereby is, set for hearing on the 28th day of April, 1924, at 9 o'clock a. m., and that notice thereof be given by posting three notices, one of said notices to be posted at the front door of the courthouse and service on the superintendent of the Osage Agency and citation upon Rose Star Pratt and George Pratt.

[SEAL.]

L. A. JUSTUS, Jr., *County Judge*.

(Indorsed:) No. 2625. In the matter of the guardianship of ————. Order for hearing application for appointment of guardian. County court, Osage County, filed April 18, 1924. Thos. Leahy, court clerk, by D. S. Landrum, deputy. Service accepted and copy received this 18th day of April, 1924. J. Geo. Wright, superintendent Osage Agency, by his attorney, J. M. H.

CITATION—GENERAL

In the County Court. In the matter of the guardianship of Rose Star Pratt

STATE OF OKLAHOMA, *Osage County*, ss:

The State of Oklahoma to Rose Star Pratt and George Pratt:

Whereas George Pratt and Rose Pratt, on the 18th day of April, 1924, filed in this court in said cause their petition for the appointment of J. G. Shoun general guardian of Rose Star Pratt:

Now, therefore pursuant to the order of said court, entered in said cause, you are hereby cited to be and appear in said court on the 28th day of April, 1924, at 9 o'clock a. m., there to show cause, if any you have, why the prayer of said George Pratt and Rose Pratt should not be granted, and ordered entered as therein prayed for.

Witness my hand and the seal of said court at Pawhuska, in said county, this 18th day of April, 1924.

[SEAL.]

L. A. JUSTUS, Jr., *County Judge*.

(Indorsed:)

SHERIFF'S RETURN

STATE OF OKLAHOMA, *Osage County*, ss:

I hereby certify that on the 18th day of April, 1924, I served the within citation on the within-named Rose Star Pratt and George Pratt, in my county, by delivering a true copy thereof duly certified to said Rose Star Pratt and George Pratt.

Dated this 21st day of April, 1924.

C. A. COOK,
By HARRY L. MOORE, *Deputy*.

Sheriff's fees

Service.....	\$1. 25
Mileage.....	6. 00
Total.....	7. 25

(Indorsed:) Original. No. 2625. In the county court. In the matter of the ————. Citation—General. I hereby certify the within to be a true copy of the original citation in my possession. C. A. Cook, sheriff, by Harry L. Moore, deputy. County court, Osage County. Filed April 21, 1924. Thomas Leahy, court clerk, by D. S. Landrum, deputy.

CITATION—GENERAL

In the county court. In the matter of the guardianship of Rose Star Pratt
STATE OF OKLAHOMA,

Osage County, ss:

The State of Oklahoma to Rose Star Pratt and George Pratt:

Whereas George Pratt and Rose Pratt on 18th day of April, 1924, filed in this court in said cause their petition for the appointment of J. G. Shoun general guardian of Rose Star Pratt.

Now, therefore, pursuant to the order of said court, entered in said cause, you are hereby cited to be and appear in said court on the 28th day of April, 1924, at 9 o'clock a. m., there to show cause, if any you have, why the prayer of said George Pratt and Rose Pratt should not be granted and ordered entered as therein prayed for.

Witness my hand and the seal of said court at Pawhuska, in said county, this 18th day of April, 1924.

[SEAL.]

L. A. JUSTUS, Jr.,
County Judge.

SHERIFF'S RETURN

STATE OF OKLAHOMA,
Osage County, ss:

I hereby certify that on the 18th day of April, 1924, I served the within citation on the within-named Rose Star Pratt and Geo. Pratt, in my county, by delivering a true copy thereof duly certified to said Rose Star Pratt and Geo. Pratt.

Dated this 19th day of April, 1924.

C. A. COOK,
By J. W. HUTCHESON, Deputy.

Sheriff's fees

Service.....	\$12.50
Mileage.....	6.00
Total.....	7.25

(Indorsed.) Original. No. 2625. In the county court. Citation—General county court, Osage County. Filed April 21, 1924. Thos. Leahy, court clerk, by D. S. Landrum, deputy. Service accepted and copy received this 18th day of April, 1924, J. George Wright, Superintendent Osage Agency, by his attorney J. M. H.

NOTICE OF APPLICATION FOR APPOINTMENT OF GUARDIAN

In the county court. Original

STATE OF OKLAHOMA, *Osage County, ss:*

The State of Oklahoma, to Rose Pratt, J. George Wright, Superintendent, Osage Indian Agency, and all parties interested in the estate of Rose Star Pratt.

You are hereby notified that Rose Star Pratt and George Pratt have filed in this court an application for the appointment of J. G. Shoun as guardian of the person and estate of Rose Star Pratt and that said application will be heard in the court room of said court in the city of Pawhuska, in said county of Osage, on the 28th day of April, 1924, at 9 o'clock a. m., at which time you may appear and show cause, if any you have, why said application should not be granted.

Witness my hand and the seal of said court, at Pawhuska, Okla., in said county, this 18th day of April, 1924.

[SEAL.]

THOS. LEAHY, Court Clerk.
By D. S. LANDRUM, Deputy Court Clerk.

STATE OF OKLAHOMA, *Osage County, ss:*

I, the undersigned, do solemnly swear that on the 18th day of April, 1924, I posted true copies of the within notice in three public places in Osage county, as follows, one at the courthouse in the city of Pawhuska, one at City Hall, and one at old agency building.

Fee, 80 cents.

D. S. LANDRUM,
Deputy Court Clerk.

(Indorsed:) Original. No. 2625. Notice. County court. Filed April 21, 1924. Thos. Leahy, court clerk, by D. S. Landrum, deputy. Service accepted and copy received this 18th day of April, 1924. J. Geo. Wright, Superintendent, Osage Agency, by his attorney, J. M. H.

In the county court of Osage County, State of Oklahoma. In the matter of the guardianship of Rose Star Pratt. No. 2625

TRANSCRIPT

Now on this 28th day of April, 1924, this matter comes on for hearing upon the petition of Rose Star Pratt for appointment of guardian, the court having been shown that Rose Star Pratt has been under guardianship prior to this date and has obtained her majority; Rose Star Pratt appearing in person and by her attorney, Walter L. Gray, and the superintendent of the Osage Agency appearing by his attorney, J. M. Humphreys, and it having been shown to the court that citations and notice has been duly issued and the case set down for hearing on this 28th day of April, 1924.

Be it remembered that upon this 28th day of April, 1924, the cause above entitled and numbered in the said court came on for hearing, pursuant to notice thereof, before Hon. L. A. Justus, jr., county judge, and proceedings were taken and evidence introduced in the said cause as follows, to wit:

And thereupon Dr. J. G. Shoun, of lawful age, was called to the stand as a witness, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, upon examination testified as follows:

Direct examination by Mr. GRAY:

Q. State your name.—A. J. G. Shoun.

Q. Doctor, you have been guardian for Rose Star Pratt while she was a minor?—A. Yes, sir.

Q. Has she always had a guardian so far as you remember?—A. I think so.

Q. Doctor you have filed a petition for appointment of guardian, I will ask you to state how this petition happened to be signed by George Pratt and Rose Pratt.—A. They asked to have it drawn.

Q. Doctor you have taken care of her as to her health, have you not?—A. Yes, sir.

Q. Has she recently had an examination by some expert oculist in Tulsa?—A. Yes, sir; Doctors White & White.

Q. And will you now state what they have reported to be wrong with her at this time?—A. This letter I have is from Doctors White & White, which reads: "Upon examination we find as follows: The right-eye vision is 10/200 or about 1/15 normal."

Q. Did he say what that means?—A. She is 14/15 blind in the right eye, and the left eye is 22/100 or 1/37 normal.

Q. Doctor, what seems to be the trouble with her eyes?—A. An ulcer of the star tissue of the eye.

Q. From what cause?—A. Probably syphilis.

Q. Is that curable?—A. Well, this is a scar from that. They think maybe it can be relieved some by proper treatment.

Q. An effort should be made to save her eyesight.—A. Yes, sir; I think everything that can be done should be done to save her eyesight.

That is all.

(Witness excused.)

And thereupon Mrs. Rose Star Pratt, of lawful age, was called to the stand as a witness, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, upon examination testified as follows:

Examination by Mr. GRAY:

Q. You are Rose Star Pratt?—A. Yes, sir.

Q. How old are you, Rose?—A. Twenty-one.

Q. When were you 21?—A. The 17th of April.

Q. How long have you had a guardian?—A. I don't know—about six or seven years.

Q. Is your father and mother under guardianship?—A. Yes, sir.

Mr. HUMPHREYS. Is this application for appointment of guardian?

Mr. GRAY. Don't you remember me stating that she had just attained majority?

Mr. HUMPHREYS. I don't remember and I don't try to remember; if you want me to remember, you will have to put it down in black and white.

Q. Rose, have you ever attempted to take care of your business?—A. No, sir.

Q. Do you know where your land is?—A. No, sir.

Q. Have you ever made any business transactions?—A. No, sir.

Q. How have your affairs been handled?—A. By guardian.

Q. Rose, do people try to get you to spend money with them and try to get you to make business deals with them?—A. Yes, sir.

Q. Have they succeeded?—A. I pay no attention to them.

Q. You tell them so see your guardian?—A. Yes, sir.

Q. Do people try to sell you high-priced cars and things like that?—A. Yes, sir.

Q. I will ask you if you have signed a petition for appointment of guardian and if this is the petition?—A. Yes, sir; that is the petition I signed.

Q. How did it happen that you signed that petition?—A. He made it out and I signed it for appointment of a guardian.

Q. Did you request that this be done?—A. Yes, sir.

Q. Rose, what is the condition of your eyesight at this time?—A. Poor condition.

Q. Are you able to see very well?—A. No; not very well.

Q. Have you been under the care of an oculist recently in Tulsa?—A. Yes, sir.

Q. What did he tell you?—A. Said my eyes would have to be treated.

Q. Has this matter been brought before this court because you feel that you are not capable of managing your own affairs?—A. Yes, sir.

Q. Rose, you feel that you are not in such physical condition at this time that you are able to take care of your affairs?—A. Yes, sir.

Cross-examination by Judge HUMPHREYS

Q. Rose, is your father living?—A. Yes, sir.

Q. Is he in Osage allottee?—A. Yes, sir.

Q. Where are your father and mother at this time?—A. They live at Gray-horse.

Q. And who have you had as your guardian heretofore?—A. Dr. J. G. Shoun.

Q. How long has he been your guardian?—A. Six or seven years.

Q. Now, you stated awhile ago that some person had tried to impose upon you by selling you high-priced cars and property. They never have succeeded in doing that, have they?—A. That is the reason I want a guardian.

Q. You want a guardian?—A. Yes.

Q. They couldn't sell you high-priced property or cars now, could they?—A. I don't guess they could.

Q. Has anybody sold you any property—car or anything?—A. No, sir.

Q. You know about what property is worth, don't you?—A. Yes, sir.

Q. If you didn't you would consult somebody, wouldn't you?—A. Yes, sir—would ask the guardian.

Q. And if you didn't have a guardian you would consult somebody else, wouldn't you—there is some one you could go to, isn't there?—A. Yes, sir.

Q. And if some one would try to sell you an old secondhand car for a new one, you would know better than that, wouldn't you?—A. Yes, sir.

Q. They couldn't fake you into that, could they?—A. No, sir.

Q. Is your eyesight so that you can get about?—A. Yes—very well.

Q. You can read and write, and you attended school?—A. Yes, sir.

Q. What school?—A. Public school.

Q. Did you graduate from school?—A. No, sir.

Q. What grade were you in?—A. Seventh grade.

Q. You can read and write—and you can count money, can't you?—A. Little bit.

Q. Well, don't you think you can spend a thousand dollars every three months without any great degree of trouble?—A. I guess I might spend a thousand dollars.

Q. Ever try it?—A. I wouldn't try it.

Q. Now you can buy your own clothing and groceries?—A. I can buy it.

Q. And you do that, don't you?—A. Yes, sir.

Q. Well dressed, aren't you?—A. Yes, sir.

Q. Have all you want to eat?—A. Yes, sir.

Q. You select your own clothing and the food you eat?—A. Yes, sir.

Q. Nothing else the matter with you in any way except you have poor eyesight—is that all?—A. About all.

Q. Well, you have no other trouble of any kind you know of, do you?—A. No, sir.

Q. Know what you are saying?—A. Yes; I know what I am saying.

Q. And you talk intelligently—you talk about anything you want to talk about, don't you?—A. Yes, sir.

Q. You understand everything, don't you?—A. Pretty good.

Q. Is your husband a white man or an Osage?—A. Osage.

Q. He has an allotment too, has he not?—A. Yes, sir.

Q. How old is your husband?—A. Twenty-two.

Q. Twenty-two?—A. Yes, sir.

Q. Just two young Osages?—A. Yes, sir.

Q. Is he under guardianship, too?—A. Yes, sir.

Q. And what makes you think you want a guardian now?—A. To take care of my business and help me in any way I want him to.

Q. What business have you that you want taken care of?—A. My money and land.

Q. Has he ever taken you out and shown you your land?—A. Yes, sir.

Q. Has any improvements been made on your land?—A. No, sir.

Q. None at all?—A. No, sir.

Q. Now you say you have been imposed upon; has anyone ever sold you any property?—A. No, sir.

Q. Has anyone ever tried to get you to deed them your allotment?—A. No, sir.

Q. They know better than that too, don't they? They know they couldn't do that?—A. Yes, sir.

Q. And if you were being imposed upon by artful and designing persons, you are too smart to let them beat you?—A. No; I am not too smart.

Q. You are smart enough not to let them get by with it?—A. Yes, sir.

By Mr. GRAY:

Q. Rose, during the time you became of age has anyone tried to sell you a car?—A. Yes; two or three times.

Q. As a matter of fact, you wouldn't let anyone talk you into buying a high priced car if you didn't want to buy one?—A. No, sir; I wouldn't do that.

Q. I will ask you if your husband and other members of the family don't try to get money from you all the time—and if you had it they would be getting it from you?—A. Yes—but I don't have it.

Q. And you have asked that guardian be appointed for the express purpose of trying to save your money for you—isn't that right?—A. Yes, sir.

Q. Now about your eyesight—has it been getting worse all the time during the last year?—A. Yes, sir.

Q. Getting so you can't see nearly as good as you did a short while ago?—A. Yes, sir.

Q. And you want a guardian appointed to take care of your property?—A. Yes, sir.

Q. And you have depended on Doctor Shoun for everything you do?—A. Yes, sir.

By Mr. HUMPHREYS:

Q. Rose, who have you talked to about having a guardian appointed after you became 21?—A. Nobody; just myself.

Q. Just yourself?—A. Yes, sir.

Q. Has anyone made you a promise that you would get a car?—A. No, sir.

Q. You know you have money accumulated at the agency?—A. Yes, sir—some.

Q. Well, all the money you have is up there isn't it?—A. I don't know about that.

Q. That money is not liable to get away from you?—A. No, sir; I don't suppose it is.

Q. You get a thousand dollars quarterly, or four thousand dollars a year—don't you think you would like to have all of that?—A. I guess so.

Q. The agency will pay you twice what you have been getting since you were 21 years of age, and pay it to you—you understand that don't you?—A. Yes, sir.

Q. If you have a guardian appointed you will have to pay your guardian, the court costs and attorney's fees; knowing that, do you want that to be done?—A. Yes, sir; I had rather have a guardian than the agency.

Q. Can you tell the court why you want that?—A. I think a guardian would take care of me better than the agency would.

Q. You think a guardian would take care of you better than the agency?—A. Yes, sir.

Q. You have been under guardianship, haven't you?—A. Yes, sir.

Q. You have never been under the Agency?—A. No, sir.

Q. The agency will give you all the money and you can spend it just as you please. The guardian will give you just what he wants you to have?—A. That is what I want.

Q. You don't want the agency?—A. No, sir; I want a guardian.

Q. Lets get this right. If the agency will pay you just like your guardian, that wouldn't suit you at all?—A. No; I had rather have a guardian.

Q. If a guardian is appointed you will have to pay the guardian's fee, the court cost, and attorney's fee out of your money?—A. I rather pay it than have the agency.

Q. You rather pay it than to have the agency?—A. Yes, sir.

Q. Now, if the agency would pay you monthly, wouldn't you rather have it that way?—A. I don't want the agency.

Q. Now, just tell the court why you want a guardian and why you don't want the agency to handle your business.—A. I think a guardian would treat me better than the agency.

Q. Well why?—A. Would treat me better.

Q. You have never had the agency to attend to your business have you?—A. I know but the agency—they are pretty hard-boiled up there.

Q. They have to be hard-boiled. That is the reason you don't want them to handle your business, because they are hard-boiled up there. They have to be hard-boiled to handle the situation?—A. Yes, sir.

Mr. HUMPHREYS. That is all.

By Mr. GRAY:

Q. Rose, the agency used to handle your business before you had a guardian?—A. Yes, sir.

Q. And you never were able to get anything done, reason you had a guardian. Is that right?—A. Yes, sir.

Q. You are pretty well satisfied with a guardian?—A. Yes, sir; I rather have a guardian.

Q. Rose, isn't it a fact that Doctor Shoun has taken care of your physical condition—called and given you medical attention at different times without charge?—A. Yes, sir.

By Mr. HUMPHREYS:

Q. How much medical attention did he ever give you free?—A. Several times.

Q. How many, do you know?—A. More than once.

Q. And he never charged you?—A. I don't think he charged me.

Q. Did you ever know of anyone a doctor overlooked charging?—A. I do.

Q. And you say you don't want the agency to look after your business at all.—A. No, sir.

Q. You want your money turned over to your guardian?—A. Yes, sir; to help me save it.

Q. Well, you wouldn't have a guardian if I had my way about it.

By Mr. GRAY:

Q. Doctor Shoun looks after your business affairs and your health and calls on you whenever you call him for medical attention, and gives you spending money?—A. Yes, sir.

By Mr. HUMPHREYS:

Q. Do you know whether you are in debt at this time?—A. I have a few debts.

Q. What are they?—A. Clothes and groceries.

Q. Are those debts that you made yourself?—A. Some of them.

Q. While you were under guardianship?—A. No; they wasn't.

Q. Wasn't that while you were under guardianship?—A. No. I had a guardian when my father and mother's guardian was appointed.

Q. Haven't you been told that if you have a guardian the guardian will have all of your money and can do as he pleases with it, and that you would get a new car?—A. No, sir. I have had two guardians and haven't had a car yet.

Q. Haven't you been told, when talking about the guardian you are asking for now, that all of your money would be turned over to your guardian by the agency and you would get just what you wanted?—A. No, sir.

Q. That is the general understanding, isn't it?—A. No, sir. I wouldn't have a guardian just for that.

By Mr. GRAY:

Q. Rose, has anyone told you that your eyesight is in such condition that you in the near future might become blind?—A. Yes, sir; that is what Doctors White and White at Tulsa said.

By Mr. HUMPHREYS:

Q. You are not blind at this time, are you?—A. But I might be before long.

Q. You can see good enough to read and write?—A. Yes, sir.

Q. You are not blind now?—A. No, sir.

Mr. HUMPHREYS. I don't believe this woman should have a guardian.

The COURT. Overruled.

Mr. HUMPHREYS. Let the record show there is an exception.

The COURT. An order will be made appointing Doctor Shoun as guardian.

Mr. HUMPHREYS. We give notice in open court at this time of our intention to appeal to district court.

(Witness excused.)

In the county court of Osage County, State of Oklahoma. In the matter of the guardianship of Rose Star Pratt. No. 2625

CERTIFICATE

STATE OF OKLAHOMA,
County of Osage, ss:

I, T. A. Jones, the duly appointed, qualified, and acting reporter of the court aforesaid, hereby certify that on the 28th day of April, 1924, I took down in shorthand notes the proceedings and testimony in the hearing of the cause above entitled and numbered in said court, before Hon. L. A. Justus, jr., county judge, and I further certify that the foregoing — pages of typewriting constitute a true, full, complete, and correct transcript and copy of all my shorthand notes of all the proceedings and testimony aforesaid.

Witness my hand at Pawhuska, in Osage County, Okla., this 3d day of May, 1924.

T. A. JONES, *Court Reporter.*

In the county court in and for Osage County, Okla. In the matter of the estate of Rose Little Star Pratt. No. 1759

NOTICE OF APPEAL

To Hon. L. A. JUSTUS, Jr., *County Judge of Osage County:*

You are hereby notified that J. Geo. Wright, superintendent of the Osage Agency, intends to appeal and does appeal from an order of the county court of Osage County, which order declares Rose Little Star Pratt to be an incompetent person; the said superintendent appeals on both question of law and fact, and on the question of fact said superintendent appeals for the reason that the evidence is insufficient to establish the fact of the alleged incompetency of said allottee. On the question of law the superintendent of the Osage Agency appeals for the reason that a jury was demanded and not waived by the superintendent of the Osage Agency.

Wherefore, the superintendent of the Osage Agency prays an appeal to the district court of Osage County.

J. GEO. WRIGHT,
Superintendent of the Osage Agency,
By J. M. HUMPHREYS,
His Attorney.

ACCEPTANCE OF SERVICE

I, L. A. Justus, jr., county judge of Osage County, do hereby acknowledge and accept service of the above and foregoing notice of appeal this 28th day of April, 1924.

[SEAL.]

L. A. JUSTUS, Jr.,
County Judge of Osage County.

ORDER

Now on this 28th day of April, 1924, this matter comes on for hearing upon the notice and application of J. Geo. Wright, superintendent of the Osage Agency, for an appeal from an order of the county court determining Rose Little Star Pratt an incompetent person.

Notice of appeal was given in open court and a bond was requested to be fixed, which is fixed by the court in the sum of \$500; that said bond is now presented to this court for approval and said bond appearing sufficient in form and substance said appeal bond is approved and said appeal granted. And the county court stenographer is ordered to prepare a transcript of the papers in this case which shall consist of the application, the notices, citation, the minutes of the court, a

copy of the appeal bond, the notice of appeal, and this order, together with all endorsements thereon, and lodge the same in the court clerk's office for the district court of Osage County within the time limited by law.

Witness my hand and the seal of the court this 28th day of April, 1924.

[SEAL.]

L. A. JUSTUS, Jr.,
County Judge of Osage County.

No. 2625. In the county court in and for Osage County, Okla.

APPEAL BOND

STATE OF OKLAHOMA, *Osage County, ss:*

Know all men by these presents, that J. George Wright, superintendent, as principal, and United States Fidelity & Guaranty Co., as sureties, are held and firmly bound unto State of Oklahoma in the sum of \$500, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, firmly by these presents.

The condition of the above obligation is such, that whereas the said J. Geo. Wright, superintendent, intends to appeal to the district court within and for said county from an order made appointing J. G. Shoun guardian of Rose Little Star in the county court of said county on the 28th day of April, 1924, at Pawhuska, in said county. Now, if the said J. Geo. Wright, superintendent, appellant, shall prosecute said appeal to the effect without unnecessary delay in accordance with the act of Congress of April 18, 1912, in the said action in the district court, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 28th day of April, 1924.

J. GEO. WRIGHT, *Superintendent*,
By J. M. HUMPHREYS, *His Attorney*.
UNITED STATES FIDELITY & GUARANTY CO.,
By D. A. GORMAN, *Attorney in Fact*.

[SEAL.]

Taken and approved by me this 28th day of April, 1924.

L. A. JUSTUS, Jr., *County Judge*.

(Indorsed:) No. 2625. Appeal bond. In the matter of the estate of Little Star Pratt. County court, Osage County. Filed Apr. 28, 1924. Thos. Leahy, court clerk.

In the county court of Osage County, Okla. In the matter of the guardianship of Rose Star Pratt, an incompetent person. No. 2625

ORDER APPOINTING GUARDIAN

On this 28th day of April, 1924, this matter comes on for hearing upon the petition of Rose Star Pratt and George Pratt, her husband, asking that a guardian be appointed for the said Rose Star Pratt. The petitioners appearing in person and by their attorney, Walter L. Gray; and it being shown that a copy of said petition was served upon J. George Wright, superintendent of the Osage Indian Agency; and that notice thereof was given by posting notices in three public places in Osage County, Okla., and by serving a copy thereof upon J. George Wright, superintendent; and that a citation was served upon Rose Star Pratt more than five days prior to this hearing; and that a copy of said citation was served upon J. George Wright, superintendent of the Osage Indian Agency; and the said J. George Wright, superintendent, appearing at this hearing by his attorney, J. M. Humphreys; and the court, after hearing the evidence and being fully advised in the premises, finds as follows, to wit:

That Rose Star Pratt is a full-blood member of the Osage Tribe of Indians, and is about 21 years of age, having recently attained her majority; that the said Rose Star Pratt lives in Osage County, Okla., in the town of Fairfax, which is approximately 26 or 28 miles from Pawhuska, Okla., and that the office of the Department of the Interior, where all business for Osage Indians is transacted, is within the city of Pawhuska; that the said Rose Star Pratt has never had any business experience in managing her affairs, and all her business heretofore has either been transacted by her parents or by a legal guardian; and that the said Rose Star Pratt has no ideas as to the manner in which her business should be transacted.

The court further finds that at this time the said Rose Star Pratt is suffering from a loathsome disease, and that the eyesight of the said Rose Star Pratt is very bad, and that an examination of the eyes of the said Rose Star Pratt by a competent physician and specialist discloses that the right-eye vision is about one-fifteenth of normal, and that the left-eye vision is about one thirty-seventh normal, and that the right eye of the said Rose Pratt presents a condition of myopia made worse by corneal scars, and her left eye presents a myopic condition.

The court further finds that the said Rose Star Pratt can not properly transact her affairs in her present physical condition, and on account of the condition of her eyesight, and that a guardian should be appointed for said reasons.

The court further finds that J. G. Shoun, of Fairfax, Okla., is a fit and proper person to act as guardian of the said Rose Star Pratt, and that the said J. G. Shoun is personally acquainted with the incompetent named herein, and has heretofore acted as guardian of the said incompetent during her minority, and is the person for whom letters of guardianship are prayed.

The court further finds that the said J. G. Shoun should file bond in the sum of \$5,000, and, upon the approval of said bond, that letters of guardianship should issue to the said J. G. Shoun.

It is, therefore, considered, ordered, and decreed by the court that J. G. Shoun is hereby appointed guardian of the person and estate of Rose Star Pratt, and the said Rose Star Pratt is hereby adjudged to be an incompetent person for the reasons above set forth.

It is further ordered by the court that the said J. G. Shoun file bond in the sum of \$5,000, and, upon the filing and approval of said bond, that letters of guardianship issue to the said J. G. Shoun.

[SEAL.]

L. A. JUSTUS, Jr., *County Judge.*

(Indorsed:) No. 2626. In the county court of Osage County, Okla. In re guardianship Rose Star Pratt. Order appointing guardian. County court, Osage County. Filed April 30, 1924. Thos. Leahy, county clerk. By D. S. Landrum, deputy. Walter L. Gray, attorney. Service accepted and copy received this 30th day of April, 1924. J. George Wright, superintendent Osage Agency, by his attorney, J. M. H.

STATE OF OKLAHOMA, *Osage County, ss:*

In the county court. In the matter of the guardianship of Rose Star Pratt.

Know all men by these presents, that we, J. G. Shoun, as principal, and United States Fidelity & Guaranty Co. of Baltimore, Md., as sureties, are held and firmly bound to Rose Star Pratt, in the penal sum of \$5,000 lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

The condition of the above obligation is such that whereas by order of the county court of Osage County, State of Oklahoma, made and entered on the 28th day of April, A. D. 1924, the above-named principal was appointed guardian of the person and estate of Rose Star Pratt and letters of guardianship were directed to issue to said principal upon his taking and subscribing the oath required by law, and executing a bond to the said ward, in the penal sum of \$5,000 with two or more sureties to be approved by the judge of said court. This bond is subject to all of the provisions of section 3 of act of Congress approved April 18, 1912, amendatory to the Osage Indian allotment act of June 28, 1906, and acts amendatory thereof.

Now, if the above bounden principal shall faithfully execute the duties of such trust as such guardian according to law, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof, we have hereunto subscribed our names, this 28th day of April, A. D. 1924.

[SEAL.]

J. G. SHOUN,
UNITED STATES FIDELITY & GUARANTY CO.,
By FREDERICK M. MORRIS,

Attorney in fact.

I hereby approve the above bond this 29th day of April, 1924.

[SEAL.]

L. A. JUSTUS, Jr.,
County Judge.

(Indorsed:) No. 2625. In the county court of Osage County. Guardian's bond. In the matter of the guardianship of Rose Starr Pratt. County court,

Osage County. Filed April 30, 1924. Thos. Leahy, court clerk. By D. S. Landrum, deputy. Service accepted and copy received this 30th day of April, 1924. J. George Wright, superintendent, Osage Agency. By his attorney, J. M. H.

STATE OF OKLAHOMA, *Osage County, ss:*

Letters of guardianship. In county court. In the matter of the general guardianship of Rose Starr Pratt.

J. G. Shoun is hereby appointed general guardian of the person and estate of Rose Starr Pratt.

Witness L. A. Justus, jr., judge of the county court of Osage County, State of Oklahoma, with the seal thereof affixed this 29th day of April, 1924.

[SEAL.]

L. A. JUSTUS, Jr., *County Judge.*

STATE OF OKLAHOMA, *Osage County, ss:*

I, J. G. Shoun, do solemnly swear that I will discharge all and singularly the duties of general guardian of the person and estate of Rose Starr Pratt according to law, and to the best of my ability. So help me God.

J. G. SHOUN.

Subscribed and sworn to before me, this 29th day of April, 1924.

[SEAL.]

MINNIE McLAUGHLIN,
Notary Public.

My commission expires October 29, 1925.

(Indorsed:) No. 2625. Letters of guardianship. County court, Osage County. Filed April 30, 1924. Thos. Leahy, court clerk. By D. S. Landrum, deputy. Service accepted and copy received this 30th day of April, 1924. J. George Wright, superintendent, Osage Agency. By his attorney, J. M. H.

In the county court of Osage County, State of Oklahoma. In the matter of the guardianship of Rose Starr Pratt. No. 2625

CERTIFICATE

STATE OF OKLAHOMA, *County of Osage, ss:*

I, L. A. Justus, jr., of lawful age, being first duly sworn, hereby certify that I am the duly qualified and acting county judge of Osage County, State of Oklahoma, and that the foregoing is a complete copy of all the papers now in the files of the case above entitled and numbered, as the same now appears of record in the office of the court clerk of Osage County, Okla., county court division.

Dated this 3d day of May, 1924.

L. A. JUSTUS, Jr., *County Judge.*

Mr. HUMPHREYS. The law specifically states that when the person becomes 21 years of age they can have a jury.

The CHAIRMAN. The Frye bill has already been introduced in the record.

Mr. HUMPHREYS. When they become 21 years of age it provides that they should be tried by jury, and we demanded a jury trial, but the court refused to give it to us.

Mr. WILSON. Here is the case of Nellie White Winette [reading]:

In the county court in and for Osage County, State of Oklahoma. In the matter of the guardianship of Nellie White Winette. No. 2538

Now, on this 12th day of February, 1924, this matter comes on upon the application of Nellie White Winette and E. J. Winette for the appointment of a guardian for the said Nellie White Winette; petitioners are present in court in person and by their attorney, Clarence Lohman, and the superintendent of the Osage Indian Agency is present by J. M. Humphreys, probate attorney; William Riber is present in person. Thereupon the following testimony is taken:

NELLIE WHITE WINETTE, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testifies as follows:

Examination by Mr. HUMPHREYS:

Q. Your name is Nellie White Winette?—A. Yes, sir.

Q. You are a married woman at this time, are you?—A. Yes, sir.

Q. You made application for the county court to appoint you a guardian?—A. Yes, sir.

Q. Just state the reason why you think you need a guardian.—A. Well, the reason why I wanted a guardian was because my health is not good and I don't think I should stay around here at all. I want to go where I can gain my health back.

Q. In what way would the guardian affect your health?—A. I could leave the State and go where I want to.

Q. You can go now if you want to, can't you?—A. Not exactly.

Q. Why can't you go where you please?—A. Well, just because I can't go away and transact business down here.

Q. How old are you?—A. Twenty-four years old.

Q. You are a full-blood Osage allottee, are you?—A. Yes, sir.

Q. And you have been receiving a thousand dollars a quarter during the last year?—A. Yes, sir.

Q. How many estates have you?—A. One and two-ninths.

Q. Then you have been receiving \$1,000 a quarter for the past year?—A. Yes, sir.

Q. You are married, you say?—A. Yes, sir.

Q. How long have you been married?—A. About seven years.

Q. Do you have a family?—A. I have one child.

Q. You have been married twice?—A. Yes, sir.

Q. Your child is by a former marriage?—A. Yes, sir.

Q. Now, just state to me how you believe that a guardian will benefit you in any way; don't you know you will have to pay your guardian for his services, and don't you know you will have to pay an attorney for his services?—A. Yes, sir.

Q. You know that, do you?—A. Yes, sir.

Q. That guardian fee will be probably between \$250 and \$350 and the attorney fee will probably be \$200 a year; that would be approximately \$500 a year, and then there would be court costs, and it would probably bring the expense up against you to between \$500 and \$600 a year; you know that, do you?—A. Yes, sir.

Q. And suppose that the Supreme Court of the United States should hold that the guardian only allow you \$4,000 a year or \$1,000 quarter, and you would have to pay your guardian and attorney out of that, would you have as much money than as you have now?—A. I don't know about that.

Q. Well, if that should happen to be the law and you were restricted and your guardian restricted to \$4,000 a year, and you could not receive more than that without making application to the Commissioner of Indian Affairs or the Secretary of the Interior, you would have about \$600 less to spend than you have now?—A. Well, if I was to go away I would have to come back to transact my business and it would take that much money.

Q. What business do you transact?—A. I have farms that I have to lease out, and if I was away I would have to come back and spend that much money.

Q. You think it would cost you that much?—A. Yes; while my guardian could do it just as good as I could, and I want to go away for my health.

Q. Now, when was the first time you thought about having a guardian; how long has it been since you had this idea of having a guardian?—A. Well, I spoke to Mr. Riber about it right around December.

Q. In December of last year.—A. Yes, sir.

Q. Now, was it your idea at that time that you could get more money to spend?—A. No, sir.

Q. You have had that in mind, if a guardian was appointed, that all this money that he had could be spent?—A. No; that is not right.

Q. You have a car at this time?—A. Yes, sir.

Q. You want a car, don't you?—A. I have a car.

Q. You thought you had tuberculosis?—A. I have always been under a doctor's care.

Q. What doctor told you you had tuberculosis?—A. Doctor Riley and Doctor Morman.

Q. Where do they live?—A. Oklahoma City.

Q. You can count money, can't you?—A. I certainly can.

Q. You can count two or three or five hundred dollars?—A. Yes, sir.

Q. You buy your own clothing?—A. Yes, sir.

- Q. You buy supplies for home and buy your groceries, don't you?—A. Yes, sir.
- Q. Who has been looking after your farms heretofore?—A. Well, I have.
- Q. You have been looking after your farms—you don't mean to tell the court you are not of sound mind, do you?—A. I don't want to be, but I applied for a certificate of competency and they wouldn't give it to me.
- Q. You don't mean to tell the court that you are not of sound mind, do you—do you know what I mean?—A. Yes, sir.
- Q. You are asking the court to declare you to be an incompetent person. What person has ever overcome your will power to that extent, that you signed deeds or have given your property away; did anything like that ever happen?—A. Yes, sir.
- Q. How much land do you still own?—A. I sold 160 acres.
- Q. You have sold 160 acres?—A. Yes, sir.
- Q. What degree of blood are you?—A. Full blood.
- Q. How did it happen you sold this 160 acres of land?—A. I don't know; I just happened to sell it.
- Q. You are more than a half blood?—A. They have got me on as a full blood.
- Q. And you say you have sold a portion of your land?—A. One hundred and sixty acres.
- Q. Was it inherited land?—A. No; my own.
- Q. Did you get cash for it?—A. Yes, sir.
- Q. Made a pretty good trade, didn't you?—A. I guess I did.
- Q. There wasn't anyone beat you out of anything in that trade; don't you think you made a good trade, got the best of that trade?—A. Well, I guess I did.
- Q. Now, what designing person has ever beat you out of any money; do you know of anyone that has ever beat you out of any money?—A. Well, I just could not say.
- Q. Well, have you ever had anyone beat you out of any money?—A. I do think Mr. Timmons did beat me out of some money.
- Q. You think Mr. Timmons did beat you out of some money?—A. Yes, sir.
- Q. How much was that?—A. I don't know exactly.
- Q. How did he do that—loan you money and charge you big interest for it?—A. Yes, sir.
- Q. You say you have a car you have gone in debt for; what was it you went in debt for?—A. Well, I owe a little on my car.
- Q. Who sold you a car?—A. Deigman Motor Co.
- Q. Where do they live, in Hominy?—A. No; Oklahoma City.
- Q. You gave your note for this car?—A. Yes, sir.
- Q. How much did the car cost in the first place?—A. \$2,100.
- Q. How much did you pay cash?—A. Well, I guess I got about \$1,000 of it paid now.
- Q. You paid \$1,000?—A. Yes, sir.
- Q. How long ago was that?—A. That's been about three or four months ago.
- Q. Did you tell them you were an Osage?—A. Yes, sir.
- Q. You told them that?—A. Yes, sir.
- Q. Did they tell you they would take a chance on collecting the money?—A. I guess they would, or they wouldn't let me have it.
- Q. What else did you go in debt for?—A. Oh, I borrowed a little money.
- Q. From the bank?—A. Yes, sir.
- Q. What security did you give?—A. Not any.
- Q. What bank did you borrow the money from?—A. Liberty National Bank.
- Q. Of this place?—A. Yes, sir.
- Q. What man at the Liberty National Bank let you have it?—A. Mr. Riley.
- Q. You say you didn't give any security at all for it?—A. Yes, sir.
- Q. He was willing to take a chance, too, was he?—A. Yes, sir.
- Q. Now, these men knew you receive \$4,000 a year and that was all?—A. I guess they did.
- Q. And knew if they loaned you this money and sold you this car, the only way they could get their pay was from the \$1,000 a quarter which you receive?—A. Yes, sir.
- Q. They knew that there was no way for them to collect this money without a guardian?—A. No; I bought them before I had a guardian.
- Q. I know, but they knew you were seeking to have a guardian appointed?—A. No, sir.
- Q. You knew that if you should have a guardian appointed, that application would be made to pay these debts that you have accumulated and that you have acquired while you were restricted—do you understand that question?—A. Yes, sir.

Q. How much more money than that do you owe?—A. That is about all I owe.

Q. Where do you live, in town or in the country?—A. I live in town.

Q. Do you own your own home?—A. No; I don't.

Q. You pay rent, do you?—A. Yes, sir.

Q. Do you have a farm and rent the farm?—A. Yes, sir.

Q. How much do you get off the farm?—A. I don't get hardly anything; I didn't get any rent this year.

Q. Do you rent for grain rent?—A. Yes, sir.

Q. And the crops failed this year?—A. Yes, sir.

Q. How much have you been getting in the past?—A. About \$50 to \$60 ; somewhere along there.

Q. How much do you pay house rent per month?—A. \$70 per month.

Q. And the lights and water and fuel cost you \$30 a month more?—A. Yes, sir.

Q. The rent, lights, fuel, and water cost \$100 a month; that would be \$1,200 a year. That leaves you \$2,800 for living expenses and for clothing. You live on that all right, don't you; you have no trouble about that?—A. I can't pay my doctor bill out of that.

Q. How much doctor bills have you paid last year?—A. I have had a doctor bill every year since my child came, and the office knows that, because they have been paying right along.

Q. Have you any trust funds up at the agency?—A. No; I have not.

Q. How much money have you accumulated at the agency at this time?—A. I don't know.

Q. What you want is to have the money turned from the United States Treasury over to your guardian so that this money may be spent for your benefit; is that right?—A. Yes; so I can go away.

Q. You can go away now, can't you, without that? Now have you stated all the reasons why you want a guardian?—A. Yes; so I can leave the State and have a home wherever I go.

Q. You can do that without a guardian; they will send your money to you.—A. They don't do that.

Q. Oh, yes, they do.—A. I have asked them about that up at the agency.

Q. They will do that; they have sent it to New Mexico or Colorado for any good reason.—A. Well, I want a guardian so he can attend to my affairs.

Q. Can't you get an attorney to attend to that?—A. No; you said it would cost too much.

Q. The lawyer I was talking about was the one that the guardian would have.—

A. Well, I would rather have one man to do all. I would rather have a guardian than have a lawyer attend to my affairs.

Q. Well, you would have two; you would have a lawyer and a guardian both; you would have to have two and have to pay them both. I want you to understand just what the cost will be if the court puts you under guardianship; you will be limited to \$4,000; do you know that?—A. Well, I want a guardian appointed for me; I applied for a certificate and they would not let me have it, so I could handle it myself; I didn't get it.

Q. Just what designing person are you afraid will take advantage of you and take your property away from you; anyone you have in mind will overreach you?—A. No, sir.

Q. They can't get your money as long as it is in the hands of the United States, and all you can get out of it is \$4,000 if you have a guardian or if you have no guardian; you know that, don't you?

Mr. HUMPHREYS. Let the record show the witness refused to answer.

A. That is probably all right, but I want a guardian.

Q. That would be less the expense of a guardian, court costs, bond, and all that, if that amounts to \$1,000, you are willing to pay \$1,000 for a guardian.

A. Yes, sir.

Mr. HUMPHREYS. The evidence absolutely failed to show that this woman was incapacitated in any way.

Mr. WILSON. I am only introducing it, not for the purpose of showing whether or not she was incapacitated but for the purpose of showing what these Indians think about this matter personally.

Mr. HUMPHREYS. I know that, but I want them for the purpose of showing we have appealed from these cases.

Mr. WILSON. Let us handle this side to suit ourselves and then you can come on.

Mr. HUMPHREYS. All right.

Mr. WOODWARD. But the trouble is——

Mr. WILSON (interposing). I do not want to be interrupted.

Mr. WOODWARD. I am not going to refer to any case you have put in here.

Mr. WILSON. I do not want you to make a speech in my time.

Mr. WOODWARD. If we do not do these things now when the committee closes they close pretty quickly and we may not get a chance at them.

Mr. WILSON. I would like to go on with my case.

The CHAIRMAN. Very well, you may proceed.

Mr. WILSON. Somebody has been very anxious to prevent these matters from being fully shown, and we have, by reason of something, I do not know just what, been unable to get a lot of matters that we would like to show this committee. And that is one reason why we want the committee to come down in Oklahoma and investigate the situation in the field.

I will now read a telegram that was sent to the First National Bank of Tulsa, Okla., by Mr. Charles B. Peters, a millionaire oil man:

WASHINGTON, D. C., April 2, 1924.

A. W. HURLEY,

First National Bank, Tulsa, Okla.:

Grant McCullough's letter to Senator Harreld protesting Osage legislation has enraged Osage council and they threaten to demand of Secretary of Interior that all Osage funds be withdrawn from the bank. Harreld much influenced by his letter. It ought to be retracted.

CHAS. B. PETERS.

Mr. WILSON. Here is a copy of Mr. Hurley's reply:

TULSA, OKLA., April 3, 1924.

CHAS. B. PETERS,

New York, N. Y.:

Thank you for your message regarding Osage matters. Grant out of town. Am surprised at what you say as letter referred to was simply a personal opinion regarding legislation of vital interest to this community and Tulsa's trade territory which is supposed to be the privilege of every citizen and certainly should not be influenced by coercion or threats. Regards.

A. W. HURLEY.

Tulsa, I might say, is located in Tulsa County, adjacent to the Osage country, and the part of the city is located in Osage County, the suburbs.

The CHAIRMAN. Do you have reference to the letter that Mr. Hurley wrote me and put in at the first hearing?

Mr. WILSON. Yes, sir.

Mr. WOODWARD. How do you know it refers to that letter?

Mr. WILSON. Apparently it does.

Mr. WOODWARD. You are guessing that it refers to the letter.

Mr. WILSON. Well, I am not going to argue with you any more. You will have your own time.

Mr. WOODWARD. All right.

Mr. WILSON. Here is a telegram from Mr. Peters to Mr. Charles Ashbrook, who I believe is cashier of the First National Bank at Fairfax, Okla. [reading]:

WASHINGTON, D. C., April 1, 1924.

CHAS. ASHBROOK,
Fairfax, Okla.:

Osage council threatens to demand of Secretary of the Interior that all Osage funds be withdrawn from the bank because of your opposition to Osage legislation. Suggest you withdraw your opposition and so wire Harreld.

CHAS. B. PETERS.

The CHAIRMAN. What is the date of it?

Mr. WILSON. April 1, the day before that other telegram I read. I understand there are other telegrams of a similar nature of about the time this hearing commenced.

The CHAIRMAN. Where were those sent from?

Mr. WILSON. From Washington.

The CHAIRMAN. Was Mr. Peters here at the time?

Mr. WILSON. I understand he was here at the time.

The CHAIRMAN. Was that about the date of the first hearing?

Mr. WILSON. Yes, sir; just about then. Mr. Peters is an oil operator, and has lived in Osage County a great many years. He was at one time an intermarried citizen, and he acquired a good deal of this oil territory and became quite wealthy. He was regarded a multimillionaire.

The CHAIRMAN. Is it true that the Osage council were so opposed to this legislation that they advocated taking the money out of the banks?

Mr. WILSON. I never heard of any on the part of the Osage council. The only thing I ever heard was in connection with this matter. I do not think they ever made any such threats. However, I can not say for certain.

Mr. WOODWARD. You have no reason to state what they have or have not done? You do not know what action they have taken officially, do you?

Mr. WILSON. No; I do not.

The CHAIRMAN. You may proceed with your statement.

Mr. WILSON. Here is one particular case in which the attorney's fees appeared to be considerable, and with reference to that I have a statement prepared. I refer to the estate of Cap Strike Axe. [Reading:]

IN RE ESTATE OF CAP STRIKE AXE

As to the item of \$1,150, paid as attorneys' fees, this amount was paid under a 25 per cent contract with Horsley & Holcombe, attorneys, to contest the probate of the will of Son-se-gra, his wife, deceased, in which she devised several hundred acres of land and accumulated moneys at the time of her decease to various kinsfolk and away from her husband. One-fourth of an Osage estate inherited from his wife was sold to parties for \$1,000, of which there was paid in money \$500, and \$300 of this immediately turned over to creditors in waiting, leaving a cash balance received of \$200 and an I. O. U. for \$500. A guardian was appointed and action brought to recover said interest in said estate and the same afterwards sold through the probate court for \$4,600, one-fourth of which, \$1,150, was paid to the attorneys under their contract. The will was contested through the county, district, and supreme court without paying anything whatever to the attorneys because of no recovery thereunder, the contract being a contingent contract.

That explains that \$1,100 fee. While the department has objected very strenuously to guardians paying out in excess of \$4,000 a year,

or \$1,000 a quarter to the Indians, yet under the interpretation of every court that has been called upon to interpret it so far that is permitted. To show their inconsistency I am going to refer to the case of Mary Pryor. Now, Mary was an old Indian, about 80 years old, and had no family except a son, who was of mature age and had the same source of income that she had. I am going to read the affidavit of Mr. Arthur H. Lamb [reading]:

STATE OF OKLAHOMA,
County of Osage, ss:

AFFIDAVIT

Arthur H. Lamb, being first duly sworn, deposes and says:

1. That he is the general guardian of the person and estate of Mary Pryor, Osage allottee No. 450, incompetent, and has been such guardian since the 29th day of July, 1915.

2. That on the 28th day of September, 1923, this affiant directed a letter to the honorable Secretary of the Interior requesting information as to the authority of the superintendent of the Osage Agency for withholding payments from this affiant as guardian of Mary Pryor, a carbon copy of which letter is hereto attached, marked "Exhibit A," and made a part of this affidavit; that this affiant received a reply to said letter dated October 8, 1923, which is hereto attached, marked "Exhibit B," and made a part of this affidavit; and that this affiant received a further reply to his letter of September 28, 1923, bearing date of October 15, 1923, which is hereto attached, marked "Exhibit C," and made a part of this affidavit.

3. That the just claims against Mary Pryor referred to in the letter of E. B. Meritt of October 15, 1923, Exhibit C, were \$600 or \$700 in claims which the superintendent of the Osage Agency had contracted or O. K'd for and in behalf of said Mary Pryor, the said \$600 or \$700 in claims so contracted or O. K'd being in excess of the \$1,000 per quarter which the Osage Agency had been expending from the funds of said Mary Pryor.

4. That this affiant, the guardian of Mary Pryor, has at all times promptly paid all bills and accounts which he contracted for and in behalf of his said ward and that she has no indebtedness contracted by this affiant, the guardian, except a few small bills for the current month.

ARTHUR H. LAMB.

Subscribed and sworn to before me this 2d day of February, 1924.

[SEAL.]

BEATRICE JOHNSON,
Notary Public of Osage County, Okla.

My commission expires July 26, 1926.

STATE OF OKLAHOMA,
County of Osage, ss:

AFFIDAVIT

Arthur H. Lamb, being first duly sworn, deposes and says:

1. That he is now and has been since the 29th day of July, 1915, the general guardian of the person and estate of Mary Pryor, incompetent Osage allottee No. 450; that he has just been called upon by the county court of Osage County, Okla., to file a report showing receipts and disbursements since his appointment as such guardian and that such report has been prepared and filed in the county court of Osage County, Okla., and he presumes that a copy of said report will be forwarded to Washington, D. C., to be presented to the House Committee on Indian Affairs.

That the last Osage payment which was paid to said guardian was the payment of March, 1922, and that since that time the superintendent of the Osage Agency has withheld from the guardian all Osage payments and that the reason being given for withholding of said payments was that the guardian had expended more than \$1,000 a quarter.

3. That since June, 1922, the superintendent of the Osage Agency has undertaken to take care of the maintenance of said Mary Pryor and has paid no funds to the guardian.

4. That on December 10, 1921, the guardian filed a report in the county court of Osage County, Okla., showing his receipts and disbursements up to December 9, 1921, and that a hearing was had on said report in the county court and said report was approved; that an appeal was taken by the sup

tendent of the Osage Agency to the district court from the order of the county court approving said report and that at the hearing had in the district court of Osage County, Okla., on said report on the 2d day of May, 1923, the superintendent of the Osage Agency, through his attorneys, entered into the following stipulation:

"Now on this 2d day of May, 1923, it is stipulated and agreed that Exhibit 1 be received in evidence. It is further stipulated and agreed that there are no objections to any items on the report of Arthur H. Lamb, as guardian of Mary Pryor, and that the sole and only objection to the approval of said report is that the expenditures exceeded \$1,000 a quarter, and that it is the contention of the superintendent of the Osage Agency that under the law a guardian can not expend more than \$1,000 a quarter from the funds of his ward for any purpose not mentioned in the act of March 3, 1921, providing for the investment of funds of restricted Indian. It is further stipulated and agreed that Mary Pryor is a member of the Osage Tribe of Indians, and as such receives approximately one and one-half Osage shares, and that her income is approximately \$10,000 a year, and that the value of her estate is conservatively \$100,000, and that the expenditures of the guardian in her behalf, as shown by said report, are in accordance with her station in life, and that said Mary Pryor is an old woman of approximately 80 years of age and has no one dependent upon her for support and has only one child, Louis Pryor, who is himself a member of the Osage Tribe of Indians, and as such receives a share in the Osage estate, and has an income somewhere near the amount received by Mary Pryor. That the only objection to the approval of said report is as above stated, that the superintendent of the Osage Indian Agency contends that under the law a guardian can not spend more than \$1,000 a quarter except as specified in the act of March 3, 1921."

5. That thereafter and on said 2d day of May, 1923, the district court of Osage County, Okla., approved said report and the superintendent of the Osage Agency perfected an appeal to the Supreme Court of the State of Oklahoma where the matter is now pending.

6. That during the latter part of October, 1923, at the request of the officials of the superintendent of the Osage Agency this affiant called at the office of the superintendent and Mr. Myers, who is apparently in charge of the disbursements of the funds of full-blood Osages, interviewed this affiant and showed him the book account of Mary Pryor and stated to this affiant that the Osage Agency had for the quarter just past exceeded \$1,000 per quarter in expenditure of funds for said Mary Pryor and that at the rate of expenditures made already in the current quarter the total expenditures when the quarter was ended would exceed considerably \$1,000 and that there were some \$600 or \$700 outstanding accounts which had been authorized by or O. K'd by the Osage Agency which could not be paid for the reason that it would make the expenditures far in excess of \$1,000; that in other words, the Osage Agency was barely staying in the \$1,000 limit and was doing so by not paying the bills which had been authorized or O. K'd by the Osage Agency; and that at said conversation said Mr. Myers requested said guardian, this affiant, to pay said \$600 or \$700 of indebtedness and to purchase for his said ward an automobile.

7. That along about the same time two or three officials of the Superintendent of the Osage Agency, including J. M. Humphreys and E. S. McMahon, requested said guardian and his attorneys to purchase a car for said Mary Pryor, which said guardian did in the latter part of November, 1923, the car purchased being a Buick sedan, at a cost of \$1,965.

8. That at no time since June, 1922, has the Osage Agency ever paid such bills as gas bills, light bills, doctor bills, medicine bills, telephone bills, nurse hire, etc.; and that said guardian has been called upon to pay said bills and has paid them.

9. That some months ago said Mary Pryor became sick with pneumonia, and this affiant, her guardian, looked after her and saw that she had the proper attention from physicians and nurses and gave whatever care was necessary, but that no representative or employee of the Osage Agency ever gave said Mary Pryor any care or attention whatsoever, except that said Mr. Myers did deliver to her a weekly check for her weekly allowance during her sickness.

ARTHUR H. LAMB.

Subscribed and sworn to before me this 2d day of February, 1924.

[SEAL.]

BEATRICE JOHNSON,
Notary Public of Osage County, Okla.

My commission expires July 26, 1926.

Mr. WILSON. That illustrates the inconsistency of the department's attitude when it withdraws from the guardian these payments of moneys which under the law and under the act of 1921 he is entitled to, because the department says the act does not warrant the guardian paying in excess of a thousand dollars; that he may expend for the ward in excess of a thousand dollars a quarter. It assumes that burden itself, and because of circumstances, probably such as confronted Mr. Lamb himself, they can not get by on a thousand dollars a quarter, and while it does not pay out to exceed that, it contracts and O. K.'s bills in excess of a thousand dollars a quarter, and then calls on Mr. Lamb to come in and pay those excesses out of funds which he still has as guardian.

Mr. WOODWARD. All of which, of course, we deny.

Mr. WILSON. Well, we are asking that the committee come down there and investigate these things, and we presume that the books will show them. That is what we want. That case was appealed to the supreme court of the State, and the supreme court of the State held, the same as the Supreme Court of the District of Columbia, that the guardian had the right. But I want to call attention to another matter—

Senator CAMERON (interposing). Have not you brought all the evidence that you have up here?

Mr. WILSON. You could probably go to the Indian agency and get that. We have the affidavit of the guardian that that is true. That is all we can get.

Mr. HUMPHREYS. What could the committee do if they did go down there?

Senator CAMERON. Can not they be brought here?

Mr. WILSON. We can not get them. We have to pick up the evidence where we can get it. It is available down there. Some people do not want to tell us about these things they know, and we know that they know it.

Senator CAMERON. Have there not been one or two committee investigations on the ground in the last two or three years?

Mr. WILSON. Oh, I think not; not for several years, and not with reference to these matters.

Senator CAMERON. Did not a House committee go down there before they passed the Snyder bill?

Mr. WILSON. I think before the House passed the Snyder bill, perhaps they did.

Senator CAMERON. That is what I thought.

Mr. HUMPHREYS. It did not investigate the guardianship question.

Senator CAMERON. I appreciate that.

The CHAIRMAN. All this testimony is interesting to me in view of the charge of the Indian Rights Association. I want to get light on the charges that have been made in connection with the practices in the courts.

Mr. HUMPHREYS. Along that line you appreciate that we can not bring 207 guardians before this committee. On that matter we want you to come down there, where you can get this information.

Senator CAMERON. I admit that sometimes an investigation on the ground may be worth while, but it seems to me that this Osage question, as to many points at least, has been threshed out for many years.

Mr. HUMPHREYS. A good many of the points, but not the guardianship point.

Mr. WOODWARD. We started on it in 1922, and have been on it ever since. This is the third year.

The CHAIRMAN. It is only lately that the fight has been made on the probate courts. There are also bills pending affecting the Five Civilized Tribes. We will have to investigate that.

Mr. WILSON. About the time that this guardianship fight came up there were reports of certain irregularities on the part of certain guardians, and the bar association of that county got together and took up the matter, and advised that a thorough house cleaning be made, and that there be an investigation of all these matters pending in the county courts. They recommended that if there were any things that were the subject of criticism, or there was any reason why anything should be cleaned up, that we clean our own house.

The CHAIRMAN. I will ask you if there is not a pretty general complaint in the State concerning these charges against the courts?

Mr. WILSON. That they are absolutely unwarranted.

The CHAIRMAN. And the governor of the State has taken a very active interest in it. He resents this, and so do others; is not that true?

Mr. WILSON. Yes, sir, it is generally resented. Things of this kind come out and people hear these scandalous reports, and believe them, and when they run them down they disprove them.

The CHAIRMAN. The Indian Rights Association involved the department also, I believe.

Mr. HUMPHREY. In reply to your question I want to put in some telegrams and letters from some Indians. The first is a telegram, as follows [reading]:

HOMINY, OKLA., April 10, 1924.

Hon. J. W. HARRELD,
Washington, D. C.

We the undersigned full-blood members of the Osage Tribe of Indians hereby respectfully ask your honorable body to assist us in our wishes. We wanted Osage affairs should be investigated before make any legislation. Chief and council has been influenced by agent A. T. Woodward and T. J. Leahy trying to force the Snyder bill of H. R. 5726 become a law. We also are not in favor of bill which increased the allowance to Osage. They passed the House and now in Senate. It's not wishes of Osage but wishes of these attorneys.

EDGAR MCCARTHY.
JOE SHONKAHMOLAH.
SAM BARKER.
TOMAN LOGAN.
ROBT. MORRELL.
TOM BIGCHIEF.

Then here is another telegram from some Indians [reading]:

HOMINY, OKLA., May 2, 1924.

Hon. J. W. HARRELD,
Chairman Senate Indian Committee,
Washington, D. C.

We understand that chief and some of the council are coming to Washington, D. C., for the purpose of trying to force Snyder's bill of H. R. 5726 to become a law as it is. Majority of restricted Osage Indians are not in favor of that bill, H. R. 5726, and are still protesting the bill or any other bill favoring the Indian Bureau. We are asking the honorable body to assist us in our wishes. We want our affairs investigated before any legislation. We now like to know and hear what day is set for hearing on Osage matters.

EDGAR MCCARTHY.
SAM BARKER.
GOE SHONKAHMAIAH.
ROBERT MORRELL.

Here is a letter from Mr. George E. Tinker, a member of the tribe and the former secretary of the council, who has been very active all throughout the history of the Osage Indian legislation. He says [reading]:

REVARD & TINKER,
Pawhuska, Okla., April 11, 1924.

Senator J. W. HARRELD,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: I am writing you with reference to H. R. 5726, which recently passed the House. This bill, if it should become a law, would take away the power from the State in the matter of handling Osage guardianships and center it in the Indian Office. This is an infringement upon the rights of the State, besides in view of the past record of the Indian Office, it is certain to result in great loss to the Osages and in further corruption of the rottenest bureau in this Government.

The passage of the Frye bill by the Oklahoma Legislature, which will soon be in effect, will, I think, remedy all the shortcomings of the present law with reference to guardianships. Personally, I am unalterably opposed to any legislation that will tend to turn the wheels of progress backward, and we who have made the fight for 30 years against long-range government are bound to see that if this bill becomes a law it will place the Osages back in the position they were prior to the passage of the allotment bill.

Very respectfully yours,

GEORGE E. TINKER.

Here is a telegram from the Oklahoma Bankers' Association [reading]:

OKLAHOMA CITY, OKLA., May 7, 1924.

Senator J. W. HARRELD,
United States Senate,
Washington, D. C.:

Oklahoma bankers urge further action on Osage bill be deferred until your committee investigates in Oklahoma. Banks of Oklahoma desire opportunity of fully presenting effect on bill in this State.

FRANK W. BRYANT, *President*.
EUGENE P. GUM, *Secretary*.

Here is another telegram from Walter Ferguson, vice president of the First National Bank of Oklahoma City [reading]:

OKLAHOMA CITY, OKLA., May 7, 1924.

Senator J. W. HARRELD,
Senate, Washington, D. C.:

Please advise me status of Osage bill and prospects for deferring further hearings until after you can personally hold investigations in Oklahoma.

WALTER FERGUSON.

I thought there was something from the governor, but I do not see it. Here is a telegram from the Oklahoma City Clearing House Association [reading]:

OKLAHOMA CITY, OKLA., May 9, 1924.

J. W. HARRELD,
United States Senate,
Washington, D. C.:

We earnestly urge that you use your good offices to postpone further action, including hearings, on Osage bill until ample opportunity is afforded to present matters from viewpoint of those most vitally affected. The citizens of Oklahoma in view of the fact that you are chairman of the Indian Committee, you can more readily and properly obtain first-hand information through contemplated hearings at Pawhuska this summer.

OKLAHOMA CITY CLEARING HOUSE ASSOCIATION,
By FRANK P. JOHNSON, *President*.
M. C. SUTTON, *Manager*.

Here is a letter from William Mee, president of the Security National Bank of Oklahoma City [reading]:

SECURITY NATIONAL BANK,
Oklahoma City, Okla., May 7, 1924.

Hon. J. W. HARRELD,
United States Senate,
Washington, D. C.:

DEAR SENATOR: I was just informed that there is a bill before the committee on Indian Affairs, of which I believe you are chairman, to the effect that all Osage tribal moneys be withdrawn from Oklahoma and that all trust and guardian funds be placed in the hands of the Department of the Interior.

I believe this would be a very serious blow to Oklahoma, especially to the Osage country, and that you ought to try to get the matter deferred until a subcommittee could come out during the vacation and investigate conditions. I am of the opinion that the House will take some action on the matter Friday.

I understand that Charlie Carter and Bill Hastings favored the bill when it passed the House. A similar bill is now before the House on the Five Civilized Tribes funds and they are fighting it tooth and toenail. In other words, it seems that the above Congressmen are willing that the funds should be handled different to what the Five Civilized Tribes funds are being handled.

I understand the Osage bill is Senate bill No. 2933.

I hope you will be successful in at least having it deferred until a subcommittee is appointed to make a thorough investigation before Congress acts. I am inclined to think that action will be taken on this matter at our clearing house meeting Friday.

Thanking you for any assistance you can give us, I am,

Yours very truly,

WILLIAM MEE, *President.*

The CHAIRMAN. The interest of the bankers, I presume, is that they do not like the idea of funds being taken out of the State and invested in other things.

Mr. HUMPHREY. Yes; it takes funds out of the business channels of the State. Here a letter from Mr. R. O. Colombe, cashier of the Fairfax National Bank [reading]:

THE FAIRFAX NATIONAL BANK,
Fairfax, Okla., April 2, 1924.

Hon. J. W. HARRELD,
Washington, D. C.

DEAR SIR: We are very grateful to you for the interest you are taking in the proposed Osage Indian legislation. We are not asking anything which is not fair to the Indian; all we want is a policy just to everyone, so that we may base our business practice on something solid. We have been very much handicapped in past years by new legislation at each term of Congress. What we would like very much at this time would be a law which would not have to be changed every two years.

The advocates of the proposed Indian bill have used unfair methods in promoting favorable sentiment both in Congress and in the public press. They have used examples of injustice done to Indians, instances which occurred several years ago and under conditions totally different from those obtaining in the Osage. We have advocated an investigation from top to bottom, but they have refused this, apparently not wanting their wash hung out on the line.

The recommendations of the business people of the Osage are, we believe, fair. We ask that the superintendent of the Osage Indians have a check on the guardians through service of all matters brought to the county court.

Ample power to the superintendent to allow individual Indians as much of their income as he sees fit, so that old Indians and those in need of medical care need not be deprived of necessities. We do not think the Secretary of the Interior should be empowered to invest the accumulated money of the Indians in anything but bonds and bank deposits.

The above recommendations are based on fairness both to the Indians and the legitimate business people. If followed out in spirit we could compete in equal terms with the grafter and at the same time give the Indians full value for their money.

All we ask of you is that you thoroughly familiarize yourself with all the facts in this matter. We are not asking anything that is not due us but we want what is fair.

Yours very truly,

R. O. COLOMBE, *Cashier.*

Here is a letter from James Bigheart, of Ralston, Okla. [reading]:

RALSTON, OKLA., April 17, 1924.

Hon. J. W. HARRELD,
Washington, D. C.

MY DEAR SIR: I hope with all your power prevent (Osage bill) to pass that's now pending before you.

It looks mighty bad for us Osages when we have a case pending in Supreme Court and the Congress to pass a law.

What we want is the 1906 allotment act. That was peace made with us.

I remain,

JAMES BIGHEART (199).

Next I have a resolution adopted at the State Democratic convention, May 6, 1924 [reading]:

Be it resolved, That this convention, in reaffirming its allegiance to the principle of local self-government and State rights, hereby declare itself as opposed to Indian legislation which has for its purpose the extension of bureau government by the Interior Department, and withdrawing from Oklahoma and the channels of business therein, the moneys, funds, and assets of restricted Indians, and hereby declares itself as favoring existing laws, and proposed Indian legislation, which sustains the jurisdiction of the Oklahoma courts to administer Indian estates and wealth created in Oklahoma.

Adopted by the State Democratic convention on Tuesday, May 6, 1924, at Oklahoma City.

The CHAIRMAN. There is a pretty general movement down there to do away with the probate court, and it is widespread; there is no question about that. You may proceed with your statement, Mr. Wilson.

Mr. WILSON. When we undertook to clean house and to make such investigations as were necessary to determine what, if anything, was wrong, Judge Humphreys, of the agency, probate attorney there, entered whole-heartedly and actively into the investigation, and conducted it for a number of days investigating general conditions. Witnesses were summoned, and the courts issued subpoenas and had witnesses come in there. Some little irregularities were discovered and corrected. Several resignations were requested, but one day probably the most serious thing that turned up was brought to light in connection with the administration of a guardianship matter some time before, and Judge Humphreys entered very actively into the investigation of that matter.

The guardian in that case was a man, one of two lawyers in the town, who have been regarded popularly as being very close to the Osage Agency. That man's handling of a certain estate was brought in question, and a hearing particularly upon that matter was ordered. A guardian ad litem was appointed, Judge Shinn, a member of the bar association.

Judge Humphreys, who had been very active, suddenly dropped out. He dropped the matter so suddenly that his action caused comment, and taken in connection with the fact that this man had been regarded publicly as having such close connections with the department, and was friendly with many of the department officials, it was thought a little funny. From that time on this departmental examination into Indian conditions ceased, right there.

The presumption is that Mr. Humphreys was directed to do so, as he seemed to be going whole-heartedly into the case, and had made remarks in my presence and in the presence of others that he was going to hew to the line, let the chips fall where they may. He

quit right there. The general investigation being conducted by Judge Humphreys quit right there.

That was a case I will detail to you in a general way. A number of years back, in 1920, the guardian bought a car for one of his wards. Hewas a drunken ward, and had the carsmashed up, and it had to be repaired several times, and he paid \$1,145 for it. He finally concluded that his ward ought not to have a car, and the last time it was smashed up he just put it in a garage, and finally got permission of the court, by order, to sell it. Now, that car was at that time sold to this guardian for—what was it, \$500?

Mr. HUMPHREYS. It was \$250.

Mr. WILSON. Yes, \$250. He repaired it and used it for a couple of years, and it turned up that this, his ward, had the car, and he had drawn the order upon the guardianship account, authorized and warranted by the court, for \$1,250. The car was about three or four years old and had been smashed up. He had made his application to the court for permission to purchase an automobile at a cost of \$1,250. He did not detail in the order what car it would be, or that it would be a second-hand car, or that it had been in several smashups and had been repaired a number of times. Anyhow, that was the fact.

This guardian paid for that car \$1,250 to one whom he contended he had sold the car previously, and whom he contended had sold the car to his ward before the guardianship. However, the circumstances as brought out in evidence are considerably different from that.

Anyhow, this hearing proceeded, and this particular guardian was requested to resign, and a new guardian was appointed, from which order of the court an appeal was taken to the district court, and the district court a few weeks ago affirmed that judgment, and now I understand it is on appeal to the supreme court. There was a good deal said about that, and it is wondered why these things stopped, why the department did not do anything further other than have Judge Humphreys enter his appearance.

I have got here—

The CHAIRMAN (interposing). How much more testimony have you?

Mr. WILSON. I probably can conclude in 30 minutes.

Mr. HUMPHREYS. An explanation of all that will be given to the committee in due time. I just want to put on record here that there is an explanation that can and will be given.

The CHAIRMAN. Mr. Wilson and Mr. Humphreys, we will be very glad to hear your explanation.

Mr. WILSON. I am making this statement because a great many people down in Pawhuska would like to hear it.

Mr. HUMPHREYS. I have found since I have been here that an attorney from Pawhuska can not please the people, especially the lawyers. I have been brought to that conclusion, I might say, some little time ago.

The CHAIRMAN. Can we get through in one more hearing?

Mr. HUMPHREY. We can conclude the whole thing in an hour, I would say, on our side.

Mr. WILSON. I want so summarize a little bit, and that is all.

The CHAIRMAN. How long will you gentlemen take?

Mr. WOODWARD. A very short time. Mr. Wright wants to make a brief statement, and Judge Humphrey, and I would say a half an hour would close it up.

The CHAIRMAN. Very well. One more meeting will close these hearings so far as the available testimony is concerned.

Mr. WILSON. Yes, sir.

The CHAIRMAN. And I understand when this is concluded you gentlemen will ask for further hearings on the ground?

Mr. WILSON. We feel that unless the committee is satisfied we ought to be given a hearing down there on the ground.

The CHAIRMAN. The committee will stand adjourned until 2 o'clock to-morrow afternoon.

(Thereupon, at 4.50 o'clock p. m., the committee adjourned until Wednesday, May 21, 1924, at 2 o'clock p. m.)

OSAGE FUND RESTRICTIONS

WEDNESDAY, MAY 21, 1924

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 2.30 o'clock p. m. in the District of Columbia hearing room, the Capitol, Hon. John W. Harreld (chairman) presiding.

Present: Senators Harreld (chairman), Curtis, McNary, Cameron, Frazier, Ashurst, and Kendrick.

Present also: Mr. J. George Wright, superintendent of the Osage Agency; Mr. J. N. Humphreys, probate attorney for the Osage Indians; Mr. Arthur Woodward, tribal attorney for the Osage Indians; and Mr. Paul N. Humphrey and Mr. Charles B. Wilson, jr., attorneys, representing citizens of Osage County.

The CHAIRMAN. Let us go ahead and try to get through this afternoon.

STATEMENT OF MR. CHARLES B. WILSON, JR.—Resumed

Mr. WILSON. Concluding the matter we took up yesterday, the matter of evidence to show the complete lack of cooperation the courts of the county have had from the Department since 1921, I might add that the guardian whom I referred to in this case was appointed upon petition of the officers of the agency, and I am reading into the record the findings of the court. [Reading:]

Now, on this 6th day of October, 1923, this matter comes on for final adjudication; and the court, after hearing the evidence and argument of counsel, and carefully considering the record, finds:

This is an action begun by the superintendent of the Osage Indian Agency to inquire into the acts and conduct of A. S. Sands as guardian of Roy Maker, an incompetent Osage Indian. In its inception this action was a part of a general investigation instituted by the superintendent of the Osage Agency, for the purpose of inquiring into the acts and conduct of various guardians of Osage Indians, but during the pendency of such investigation it was deemed expedient by the court that a guardian ad litem be appointed for Roy Maker, and Preston A. Shinn, a member of the bar of Osage County, was appointed as such guardian ad litem. Mr. Shinn thereupon filed certain specific charges, in which it was alleged that Mr. Sands purchased a certain Chalmers automobile Model 630, of the vintage of 1916, from G. B. Mellott, guardian of Phillip Carson, incompetent, that said purchase was made in October, 1917, and the price paid therefor was the sum of \$250. That on the 23d day of October, 1919, Mr. Sands was appointed guardian of Roy Maker, incompetent, and on November 17, 1919, filed his application in this court praying for authority to purchase a car—

Mark the words, "a car"—

for said incompetent, and pay therefor the sum of \$1,250. That authority was granted to purchase said car, and that Mr. Sands thereupon drew his check payable to one Dora Shimonek for \$1,250 in payment for said automobile. That the car in question was the same car sold in 1917 to Mr. Sands by Mr.

Mellott, and that said car had been kept by Mr. Sands until a short time before his appointment as guardian of Roy Maker, and then sold to Mrs. Shimonek, and resold back to Mr. Sands as guardian for said Roy Maker. It is charged in said petition that the acts and conduct on the part of Mr. Sands constituted fraud in substance, and that on account of such acts and conduct he should be declared to be unfit to retain such guardianship, and should be removed by this court.

The guardian for his answer to the petition of Mr. Shinn as guardian ad litem, admits the purchase by himself from G. B. Mellott of the car in question, that he retained same until August or September, 1919, and sold said car to Dora Shimonek for about \$925. That some time thereafter, and before the appointment of the same Sands as guardian for Roy Maker, the said Roy Maker purchased said car from Dora Shimonek without the knowledge of the said A. S. Sands, and agreed to pay her the sum of \$1,250 therefor. That after his appointment as guardian he was requested by said Shimonek to pay for the car, and in pursuance of said request, he filed his application for authority to purchase the same, secured a court order therefor, and paid said Shimonek the said sum of \$1,250 therefor. The guardian further alleges that at the time he purchased said car from Mellott, it was in bad condition; that he repaired said car and kept it in repair during the time he retained possession thereof; that after Dora Shimonek purchased said car from him, she placed extra equipment thereon to the approximate value of \$150; that at the time of the sale by the said Dora Shimonek to Roy Maker, and at the time of the payment for the car by himself as guardian, said car was in good condition and worth the sum paid therefor, and that said car would have cost, if new, at that time, approximately \$1,950. That all of said transactions was well known to the county judge of Osage County, and to the Osage Indian Agency, and was a fair, open, and honest transaction; and he prays an order approving his acts and conduct in the premises.

The question at issue as presented by the pleadings herein is, were the acts and conduct of the guardian in the matter of the purchase of said car for his ward, such as constituted fraud upon, or mismanagement of the estate of said ward?

In determining this question it will be necessary to review briefly the evidence presented to this court. The record evidence is as follows:

That on the 25th day of September, 1917, G. B. Mellott as guardian of Phillip Carson, incompetent, was the owner of the car in question; that pursuant to an order of this court made on that date authorizing him to sell at public auction said car, he did on the 19th day of October, 1917, sell said car to A. S. Sands, receiving therefor the sum of \$250. That on the 23d day of October, 1919, the said A. S. Sands was appointed guardian of Roy Maker, incompetent. That on November 14, 1919, A. S. Sands, guardian of Roy Maker, made application for authority to purchase a car for his ward, and to pay therefor a price not to exceed \$1,250; and on said date this court entered its order permitting him to buy a sewing machine and an automobile. The order is short, and it would be well to quote therefrom at length:

"On this the 14th day of November, 1919, it appearing to the court from the petition of A. S. Sands, guardian of the above-named incompetent, and the facts offered in support of said application, that said ward is in need of a sewing machine and an automobile for the use of himself and family, and that the income and social standing of said ward justify such expenditure.

"It is therefore ordered that A. S. Sands, guardian of the said Roy Maker, be and he hereby is authorized to purchase out of the funds of said ward, which are now or which may hereafter come into his hands, a sewing machine not to cost in excess of \$88, and an automobile not to cost in excess of \$1,250, and that bills of sale therefor be taken in the name of the said guardian and filed for record in the office of the county clerk of Osage County, Oklahoma. G. B. Sturgell, county judge."

That thereafter, and on February 27, 1920, A. S. Sands issued his guardianship check to Dora Shimonek for \$1,250 in payment for said automobile.

There is no showing in the record thus far as to the kind or character of automobile to be purchased, or as to whether it was to be an old or new car, or from whom the purchase was to be made, except the report of the payment therefor to Dora Shimonek.

It is admitted by the guardian that the facts as set forth in the court records are true. It is further admitted that the car sold to him as guardian of Roy Maker was the same car which had previously been sold to him personally by Geo. B. Mellott for the sum of \$250; and it is the contention of the guardian ad litem that

this transaction constituted fraud per se, and mismanagement of the funds of said ward, for which cause he should be removed by this court as guardian of said ward.

On the other hand, and in defense of his acts and conduct in relation to the purchase of said automobile, Mr. Sands offered the testimony of himself and Mrs. Shimonek, and various other witnesses, including G. B. Sturgell, former county judge of Osage County, and George H. Beaulieu, a clerk of the Osage Agency. Mr. Sands testified that Roy Maker had the car in question in his possession at the time of his, Sands, appointment as guardian, and that in making the application for the purchase, and securing the court order and paying the \$1,250 to Dora Shimonek, he was merely paying a preexisting obligation contracted by his ward before his appointment as guardian; that he was well acquainted with said car, having a short time theretofore owned it, and that it was worth the sum of \$1,250. The evidence is not clear as to the reason for the application to purchase and the court order based thereon being drawn in the manner indicated above, and the fact that it was not disclosed in said application and order that permission was requested to pay a preexisting obligation. Mr. Sands testifies that he has no definite recollection of the transaction, and that it was probable that some other member of his firm, or some stenographer has drawn said instrument, but that he himself could have done so. He further testifies that a hearing was had on said application, at which a representative of the Osage Agency was present, and that all the facts were presented to the court, and said order was signed by the court with full knowledge thereof.

Mrs. Shimonek in her testimony corroborates the testimony of Mr. Sands in regard to the purchase by him as guardian of said car; and that she paid him approximately \$1,000 for said car sometime during the month of September, 1919. She further testified on several occasions during the progress of this hearing, that she had made thorough search for the check with which she paid for said car, but had been unable to find it, and on October 4, 1923, she presented to this court and offered in evidence a check dated July 9, 1919, payable to A. S. Sands, for \$964.65, with a memorandum attached, showing certain other items aggregating \$65.65, and a car at \$900. She further testified that she delivered said car to Roy Maker before the appointment of A. S. Sands as his guardian, but that the same had not been paid for at that time.

Mr. Beaulieu testified that Roy Maker and his wife drove up to the agency in the car in question, and asked his permission to purchase it; that he told Maker after his debts were paid if he would quit getting drunk, and behave himself, he might buy a car; that he looked at the car casually, but could not state its value, nor the price at which it was to be purchased, and that this occurrence was some time in the summer of 1919, prior to the appointment of Mr. Sands as guardian.

Mr. Sturgell's recollection of the transaction was rather hazy and his testimony too indefinite to be positive, due to the fact that numerous transactions were coming up daily before him, and it was impossible for him to keep the details in mind.

On the question of the value of the car in question, Mr. Nesbitt, enforcement officer for the State highway department, testified that the factory price of a new car of the model in question was \$1,070 f. o. b. factory.

G. B. Mellott testified that he purchased said car new, and that the price thereof, delivered, was \$1,145.

Mr. Carriker, Mr. Ferguson, and Mr. Bacon each testified that at the time of the purchase of said car by Mr. Sands, as guardian, the car was worth \$1,250, the price paid therefor.

Roy Maker, the incompetent, testified that he bought the car from Mrs. Shimonek about two weeks before Mr. Sands was appointed as his guardian, under authority from Mr. Beaulieu, and that after the appointment of Mr. Sands as his guardian he came up to the courthouse to see the judge about it; that he had had some trouble with the car; that it got hot and steamed up, and he would have to stop and let it cool off.

The evidence further shows that the car in question had been in two or three wrecks before Mr. Mellott sold it, and that at the time of the sale it was not in running condition; that it had been badly abused and he had been compelled to expend large sums of money for repairs; that Mr. Sands, after he purchased the car, spent some four or five hundred dollars in repairs and replacements, and that he drove the car up to the time he sold it to Mrs. Shimonek. The evidence further shows that after Mrs. Shimonek purchased the car she placed thereon five new casings, as well as some other extras.

All the evidence in this case leads the court to the inevitable conclusion that Mr. Sands at the time he purchased the car in question knew that the same was an old second-hand out-of-date automobile; that he knew it had been wrecked and

repaired; and that such repairs had necessitated the expenditure of large sums of money, and should have known that it was not to the best interest of said ward to purchase said car at the price paid therefor. That said purchase was made from a person whom he had been long and intimately acquainted with and between whom and himself there had long existed the relationship of attorney and client. That the purchase price of a new car of the character of the car in question was \$1,145 delivered, and that the car in question, after having been driven for some three years, and after having had numerous and sundry repairs placed thereon, was sold for \$1,250, a greater price than when originally purchased as a new car. Mr. Sands contends that the general advancement in the price of automobiles, and the fact that such numerous repairs and replacements had been placed on the car in question, enhanced its value above that of its market price when new. With this contention I can not agree. Notwithstanding evidence of mechanics to the contrary, it is a matter of common knowledge that by reason of the many changes and improvements that are made from year to year upon Chalmers automobiles, as testified to by Mr. Nesbitt and as shown by the records compiled by the highway department of this State, an automobile manufactured and marketed in any one year must necessarily decrease in value with each succeeding year of its existence, and the very fact that repairs and replacements were necessary for the upkeep of said car is evidence in itself of its deteriorated condition.

This investigation was instituted by the Osage Agency, and the first hearing hereof was had at their behest; but thereafter, for some unexplained reason, they became exceedingly inactive, and seem to have lost interest in the prosecution and the outcome thereof. It is the policy of this court that when matters of this character are brought to the attention of this court by the Osage Agency, to go into them fully and to make a complete investigation, let the results be what they may, and this court further desires that in all matters of this kind that the Osage Agency actively participate in all matters instituted by them, and not stand idly by as an uninterested spectator at the trial.

This court must reluctantly conclude that the evidence in this cause substantiates the charges filed by the guardian ad litem, and that A. S. Sands is not a competent or proper person to manage the affairs of this ward, or to act as guardian or administrator in any case of this court.

It is therefore adjudged and decreed by this court that the said A. S. Sands be discharged as guardian of Roy Maker, incompetent, and is further ordered to file his final report in said guardianship within five days from this date.

L. A. JUSTUS, Jr., County Judge.

Mr. HUMPHREYS. The court made an order, upon petition of the Osage Agency, striking that, and made it contempt of court to use that in any place?

Mr. WILSON. Not that I know of. I have been informed that after this finding of the court was made, you came in and asked for that part of it reflecting on the agency stricken, and that it was stricken.

That is the finding made by the court, based upon evidence in that case.

Mr. HUMPHREYS. Will you answer my questions? You know that he did make an order striking that out?

Mr. WILSON. I have heard he did make an order at your request. I am reading from the original finding of the court, and it is a matter of common knowledge in Pawhuska that that correctly details the state of facts.

Mr. HUMPHREYS. In the face of the finding of the court?

Mr. WILSON. I do not know that the court made any order not to use it.

Mr. HUMPHREYS. He did.

The CHAIRMAN. There is no use having a colloquy over that.

Mr. WOODWARD. I would like to have the privilege—

Mr. WILSON (interposing). I want to state further that this case was appealed to the district court, and the judgment of the county court sustained.

The CHAIRMAN. Who is this fellow Sands?

Mr. WILSON. Mr. Sands is a practicing attorney.

The CHAIRMAN. Who had him appointed guardian?

Mr. WILSON. Appointed upon the petition of Mr. Wise of the agency, signed by Mr. Woodward.

The CHAIRMAN. How did the Department come to have a guardian appointed?

Mr. WILSON. That was a very common practice prior to 1921?

The CHAIRMAN. You are making the point that some of these guardians were appointed by the department and that their derelictions were due to the department?

Mr. WILSON. That is not the particular point. The particular point that I am going to make is that we think we are having no cooperation, the courts from the department, in matters since 1921, and when a matter comes up regarding a man who is personally friendly to the officers of the agency, they immediately withdraw therefrom in spite of the fact that this is a hearing which had been actively theretofore participated in by the department officials, and in this particular case the facts were elicited in a general hearing not having any particular regard to this matter in which Judge Humphreys himself actively participated, and in the absence from town of Mr. Wright, who was actively interested in this matter, he was probably instrumental in having the charge itself filed; but in the morning following Mr. Wright's return Mr. Humphreys appeared in court, but he had nothing further to do with the case and dropped the matter.

The CHAIRMAN. Here is a charge made that these guardianships are expensive. Do you mean to say that the department has changed on that, that they formerly appointed guardians?

Mr. WILSON. The guardians were appointed on the petition of the department officers up to 1921, the 3d of March.

The CHAIRMAN. In all these cases stated as being heavily expensive, were any of those guardians appointed by the department?

Mr. WILSON. I expect so, but I have not investigated as to the fact.

The CHAIRMAN. Did the department take one man for several cases, or did they just appoint one man for each guardian?

Mr. WILSON. I do not recall.

The CHAIRMAN. Is the department appointing professional guardians as well as the other people there?

Mr. WILSON. I know that the department, at least with reference to one man, appointed a guardian who was denominated as a professional guardian, and he is a good guardian. For that reason he is termed a professional guardian. He was formerly an employee of the department who came to Pawhuska from Washington, where he had been in the employ of the department, and entered the office.

The CHAIRMAN. There is some complaint here about professional guardians. What I want to know is, is the department responsible for some of these professional guardians?

Mr. WILSON. I think that I recall that they are responsible for the appointment of one man who is referred to as a professional guardian in several instances, but I have not made careful investigation as to who made application for the appointment. At the time they asked for Mr. Colvill's appointment, he had recently been an employee of the department.

The point I want to dwell on particularly with reference to this matter is that we are urging that the advantage of guardianship handling of the funds is in the personal attention which the guardians give to the ward, and we insist that that advantage could not possibly be given by any departmental management.

The CHAIRMAN. Do you mean to argue that the department has recognized the principle by appointing guardians themselves?

Mr. WILSON. The department recognized that by their acts for 11 long years, from 1912 to 1921. From 1912 to 1921 the Indian got all his money. There was no provision of the law whereby the department or anybody else could impound money belonging to these Indians. Our contention is this, that the department's interest and the department's activity right now and since 1921 is in the impounding and handling of this money which the act of 1921 sets aside, and we also contend that because the act of 1921 limits the amount which they can impound by permitting guardians also to impound money, they want to get rid of the guardianship to the end that they may get all of the money. I do not know why it is. I am not charging corruption. It is an ambition to get hold of and control large sums of money belonging to the Indians which in the aggregate amount to hundreds of thousands of dollars. Some of the estates are over \$100,000, and one is over \$300,000.

Up to 1921, March 3, we had the same law identically that we have now, and we had the same method of administering it or controlling it by the department that we have now—identically the same law. So long as there was no money to handle, so long as there was nothing to do in connection with these incompetent Indians who had to have guardians, the department was willing to have the guardians appointed. When an Indian got drunk, and extravagantly expended his money, the department went before the county court and filed its petition and had a guardian appointed to take care of that man, thus recognizing that the guardian in his individual capacity could better handle the personal feature than could the department itself.

Now, in the hearing leading up to the passage of this act of 1921, Mr. Wright himself was called to the witness stand before the House Committee on Indian Affairs and testified as follows:

Mr. ELSTON. You were speaking of guardians. What does that include?

Mr. WRIGHT. Yes; legal guardians of Indian children.

The CHAIRMAN. They sent the same letter to the guardians of the Indian children that they sent to the banks?

Mr. ELSTON. It opens up a field of inquiry. How are these guardians appointed?

Mr. WRIGHT. By the local courts. We have a very good law here that is not applicable to the Five Tribes. The local courts here have jurisdiction of probate matters, but the department has authority to approve and to investigate any matters pertaining thereto, and we have a law clerk who gives that his attention. There is a check there.

Mr. ELSTON. There is a double check by the court and also a check by the Indian Office.

Mr. WRIGHT. Yes, sir; and it works very well.

The CHAIRMAN. Which one of those checks prevails usually?

Mr. WRIGHT. They both go together pretty well. I do not recall any case where the court has declined to follow the recommendation of our office.

The CHAIRMAN. That is what I wanted to get into the record.

Mr. WRIGHT. Yes, sir.

That is with reference to the same letter; I am going to let Mr. Humphrey talk about that matter. It is a matter of similar nature to that which I called to the attention of the committee yesterday when I introduced those telegrams.

Now, I want to say——

The CHAIRMAN (interposing). What is the date of this testimony?

Mr. WILSON. It was in 1920, and it was the testimony in the hearing leading up to the enactment of the 1921 law, the one termed the Snyder bill.

The CHAIRMAN. Is that the same system?

Mr. WILSON. Identically the same system with reference to the departmental check upon the court handling of guardianships. No change whatever has been made.

Now, prior to that time the Indian got all his money. There was no interest of this department in great sums of money impounded and accumulated. After that time, by virtue of the provisions of the Snyder bill of March 3, 1921, moneys became impounded in the hands of the department belonging to those Indians denominated incompetent and not under guardianship. By this time it amounts to a vast sum.

The CHAIRMAN. This bill does not propose to take out of the hands of the department anything except the increased amount of these quarterly payments?

Mr. WILSON. Oh, no.

The CHAIRMAN. Under the present law the guardian can, of course, expend more than the amount of these quarterly allotments.

Mr. WILSON. Yes, the guardians are permitted to be more liberal in their expenditure of guardianship funds in the handling of Indian estates.

The CHAIRMAN. Has the question been settled whether the department is limited to paying to the Indian these quarterly allowances?

Mr. WILSON. The department can not pay to the Indian who is of half or more Indian blood in excess of \$1,000 a quarter.

The CHAIRMAN. Can the department pay more to the guardian?

Mr. WILSON. It can, and it does, and there is where this contention arises. The guardians have collected in the aggregate many millions of dollars which is impounded for the use of their individual wards. That is a big sum, and our contention is that because there are millions of dollars in the hands of these guardians which the department wants to get they are trying to get a law enacted whereby they can bring all that money into the hands of the department. That is the real motive. For 11 years the department realized the efficiency of court management, and when they were brought in contact with an Indian who required guardianship they petitioned the court for the appointment of a guardian and just before this law was passed in 1921 they testified that that was an efficient system; but when these millions began to accumulate in the hands of the guardians they changed their attitude and they want to take it away from us. The language of this bill and the policy as expressed in the testimony of Mr. Burke and Mr. Wright would permit them to do so.

Senator KENDRICK. Does the record show that the Indians or wards have sustained any losses of any consequence through the administration of their affairs by guardians?

Mr. WILSON. I think not, sir—that is, to any considerable extent. Senator, they have never lost a cent through investment. There is a dispute in that these gentlemen claim that the guardians sometimes spend more money for the Indian than they need to. They demand that the guardian limit his expenditure to \$4,000 a year regardless of what the necessity may be.

Senator KENDRICK. Well, in connection with the economical administration of the estate, has it been found more inexpensive and economical to appoint one guardian for a number of Indians?

Mr. WILSON. I do not know, Senator, that that enters into the question of economy. The costs of a guardianship are determined by rules, and where there is one guardian for several people instead of two or three it costs just as much. If the guardian has another ward whose conditions are identical, it costs that ward about the same.

The CHAIRMAN. When he has two or three people in one family, it is all one procedure?

Mr. WILSON. No, sir.

Senator KENDRICK. There are the numerous fixed charges just the same as though the guardianship covered different people not all in one family?

Mr. WILSON. Yes, sir.

Senator KENDRICK. The expense in each case is practically the same?

Mr. WILSON. Yes, sir.

Senator KENDRICK. Has it not been found advisable to appoint certain guardians for different Indians because of their administrative ability?

Mr. WILSON. Yes, sir.

Senator KENDRICK. Sometimes a man in a community is unusually capable and qualified to handle property. I know very well in my own case that I have often wished I had a guardian. [Laughter.]

Mr. WILSON. The guardians are generally experienced business men. They are bankers, men who command big salaries, and in his testimony before this committee at an earlier date Judge Humphreys testified to that fact. There are some guardians who are not approved by the agency; but, as I say, since 1921 this controversy has arisen and it appears to grow out of the question of money. They do not appear to give much consideration to the fact of the personal attention that may be given to the welfare of a ward, and throughout all of these hearings before this committee and throughout the hearing that lasted for weeks before the House committee they dwelt upon the fact of who can handle these matters for the least amount of money. If there is nothing to be done except taking that money and paying it out at the rate of \$1,000 a month or whatever is paid, and investing the rest in United States bonds, we admit that there would be a financial saving by having it handled by the department.

Senator KENDRICK. May I ask there a thought I expressed partially the other day? Is it not possible to maintain your principle of the plan of guardianship and at the same time restrict to certain forms of investment the money held by guardians?

Mr. WILSON. Yes, sir; that is restricted by the law of the State of Oklahoma and it is practically the same as the restriction placed upon it by this law, except that the laws of Oklahoma permit the investment in real-estate securities. Now, if the investment were

to be made by the department, I can see that it would be dangerous to invest in real estate securities, but these are business men, most of them, who have the guardianships, and they know values and they know what to do.

Senator KENDRICK. I dislike to ask many questions because I have been unable to attend meetings regularly and to get the benefit of the hearings. I have in the main found that on questions concerning the Indians, the department was endeavoring to do the right thing by the Indian, but you have touched here what I believe to be the most pathetic thing in connection with the Indian's affairs of to-day, and that is the absence of any system by which the Indian may partially enjoy his property under the administration from Washington. I assert, because of my actual acquaintance with at least two if not three tribes of Indians, that it seems not only difficult but absolutely impossible to enable the Indian to participate in the benefits of his own money under the administrative system from Washington. He may have plenty of this world's goods, and yet he will dwell as a rule in the most abject poverty all the time, and that one thing is of the most vital importance in my opinion to the Indian to-day, to bring some kind of a change in his affairs.

The CHAIRMAN. Personal touch.

Senator KENDRICK. Yes; so that he will derive real benefit from the property he owns, but not through extravagance or recklessness or riotous living. He is as remote from deriving those real benefits to-day as the ends of the earth.

The CHAIRMAN. The guardianship method furnishes the best method I have been able to think of in that particular.

Senator KENDRICK. In this question of economy, it is not, after all, a question of whether it costs a little more or a little less.

Mr. WILSON. That is our contention. That is our idea of this matter.

The CHAIRMAN. It is not a criticism of the department. They are not equipped to give it personal attention. That is the reason I favor it.

Senator KENDRICK. I hesitate to say this, but I have felt it so many times, I have felt that in the very interest of these people I would be perfectly willing to settle every bit of my own business affairs, close that out so that there can be no question, resign from the Senate, and take the agency of one of these tribes and see if something could not be done to bring to them the benefits to which they are clearly entitled but which it seems impossible to give them even with honest administration. It is a pitiful situation.

The CHAIRMAN. The impounding of the Indians' money is not all there is to it; there is no question about that.

Mr. WILSON. Nobody can charge Mr. Wright with inefficiency in the matter of general administration of Indian affairs. He is a fine Indian agent, but he does not seem to grasp the personal touch feature of this Indian question. Not only that, but if they could organize their department whereby they had plenty of men, I am not sure that that would accomplish the desired results. You gentlemen are from Western States, and Senator Kendrick, if you would go down there and approach, yourself, as intelligent an Indian as Joe Shum-Kah-Mol-La, who was here the other day, and attempted to talk with him, being a stranger you would not get very much attention. He

would not talk nearly as much in his home State, as he talked here before this committee. No stranger can do it; they won't go to a stranger.

But that is our idea, I think, Senator; you have made my speech. That one matter that I overlooked in connection with this record is in connection with several items which are found on page 105 and conclude on page 106 of the Senate hearings of this session, being memoranda Nos. 13 and 14. Memorandum No. 13 is in the matter of the guardianship of Cora Bevard Downing, and memorandum No. 14 is in the matter of the guardianship of Susie Whipkey.

In the first case, this memorandum reads:

In this case the guardian had been discharged for two years for the following provision in the final order that the guardian should settle with the competent ward. More than two years have gone by and the ward complained to the superintendent of the Osage Agency that the guardian had not settled with her, and after a long hearing and strenuous fight a hearing was had upon an order of the county court, which was made upon the objection of the superintendent of the Osage Agency. The court found that the guardian was in debt to the ward in the sum of over \$1,200.

In the other case a like charge is made, but in that the guardian is said to be indebted to the ward in the sum of \$10,000. I have no personal knowledge of the second case, but in the first case I have been employed upon appeal to represent the guardian in the district court. In that case the guardian had resigned some years before the institution of this matter, and the final hearing had been had, in which it was found that a small sum of money was due from the guardian to the ward, and the guardian was directed to pay it. About three years afterward this woman, who was more than half white, made a complaint of some kind that she had not gotten her money. Judge Humphreys was then in charge and he appointed an auditor, and the auditor reported that the guardian was some \$5,500 short, and they had this hearing three years after the case had been closed, and as I understand it the attorneys were put to some embarrassment in not being able to collect their evidence.

In the Whipkey case, the case had also been closed and now comes in the Agency and complains that there is a shortage of \$10,000. Now if there is any shortage I admit that it is not a favorable reflection upon the guardian. It is deplorable; but the point that I make here is that under this system of agency supervision, if they let a \$10,000 or a \$5,000 shortage get by them, it is simply and purely evidence of negligence on their part and they are as much to blame for it as the guardianship system, and if there is any deficiency it is not because of any deficiency in the system but it is because of the fault in the way in which it is administered.

Now, I say, and the facts will bear me out, that up until one year ago the department has given this duty which is imposed upon it very slight attention indeed; such slight attention, in fact, that I know of several estate cases wherein the chief law officer of the Indian Agency has himself been appointed executor or administrator, he being the chief legal officer of the department whose duty it is to supervise these affairs. I refer to Mr. Woodward. I am told in some of these instances, if not all of them, he even drew the will in which he was named as the executor.

I only point to that; I do not know that there is any corruption; I have never heard of any; I do not believe there is. But it is evidence

of maladministration on their part of their duty. This department officer has himself appointed executor of a will, hires an attorney to represent him, and that attorney is allowed fees for his services.

Senator KENDRICK. I do not think that agent was very reasonable; he might have had the property bequeathed to himself.

Mr. WILSON. Well, he would not do anything like that, but that is illustrative of their attention to that phase of their duty which is cast upon them by this statute. Within the last year, I must say, that part of the agency duty has been diligently looked after by Judge Humphreys. He has made a very good officer, but, as I suggested here the other day—I do not know whether you were here—the only trouble is that Judge Humphreys is under a layman. He takes his directions from a man who is not a lawyer. Mr. Wright is an excellent agent. He is probably superior to any agent we have in administrative affairs, but he does not understand these legal phases, and Judge Humphreys is under him and he is doubtless in many instances directed by Mr. Wright what to do. I call particular attention to this case that I read. It is the general understanding that the sudden change of manner on the part of Judge Humphreys was because he was directed to get out of this particular case.

Senator FRAZIER. Don't you think one good administrator could take care of more than five cases?

Mr. WILSON. Yes, sir; I think so, but it is the law of our State that he would not be permitted to do so unless the guardian or administrator is a trust company.

Senator FRAZIER. If the Indians were put back under the department, that one man could not take care of 25 or 30 cases?

Mr. WILSON. I do not think that it would be practicable to do so and give to each case the particular personal touch, as we call it, that is needed, and I think possibly that the idea of the State legislature of the State of Oklahoma when it made that provision of the law was that if a guardian were permitted to take too many guardianship matters, it would become more a matter of business with him.

The CHAIRMAN. He gets into the same position as the superintendent and his forces.

Mr. WILSON. I think that is a good provision of the law.

The CHAIRMAN. I take the position that the superintendent and his forces just simply can not do it even if they want to. I am not criticising the department at all.

Mr. WILSON. Mr. Humphrey suggests that I call the attention of the committee to the fact that if in the final determination of these cases that I have called attention to it is determined that the guardians are short, the shortages will be covered by surety bonds so that the wards will not lose anything.

Senator KENDRICK. Do you have in mind the approximate restrictions imposed upon the administrator as to the kind of investments he shall make in dealing with the ward's money?

Mr. WILSON. Yes, sir; in a general way. I may not be able to think of all of them, but they are United States bonds and State and county bonds, mortgage securities not exceeding 50 per cent of the value, and time deposits in banks on interest. I think it is permissive to invest these funds in—they could be invested in personal property.

Senator KENDRICK. That clearly indicates that the restrictions are intended thoroughly to safeguard the investments.

Mr. WILSON. Yes, sir, that is the intention and the restrictions are practically the same as in this proposed bill except that the proposed bill omits real estate securities; but the objection that I have to this proposed bill is based largely upon the fact that it is the expressed policy of the Indian office to invest all of this surplus money in United States bonds, thereby taking it out of the business channels of our State and county.

Senator KENDRICK. Does the bill as proposed intend to do away entirely with the guardianship?

Mr. WILSON. It does not do so in express language, Senator. Now, by the terms of this bill, if there is a legal guardian the money may be paid to the legal guardian in exactly the same amounts that it is paid to the Indian. In other words, if an Indian receives \$1,000 a quarter, the guardian will receive \$1,000 a quarter. It is not mandatory. Now, Mr. Wright in his testimony before the House Committee has said that he did not see any necessity for guardianship for an Indian when the department can pay him his money and when the administration of the Indian's affairs through the guardianship system was more expensive and he indicated and said as much in that testimony, that except in the case of children, he favored the appointment of guardians only in the case of imbeciles and insane people. Many of the Indians under guardianship are apparently bright, but they do have a mental deficiency in the handling of money. That Indian lady whom I read about yesterday, Mrs. Hyatt, is a very intelligent Indian woman but she does not know how to handle money at all.

Senator FRAZIER. That applies to a lot of white people, too.

Mr. WILSON. You could give an Indian \$1,000 and it would be spent by night.

There is another provision of this bill that I want to call to your attention. Section 4 provides that:

No contract for debt hereafter made with a member of the Osage Tribe of Indians, not having a certificate of competency, shall have any validity unless approved by the Secretary of the Interior. The Secretary of the Interior is hereby authorized and directed to pay out of the funds of a member of the tribe any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts or acts of carelessness or negligence, * * *.

Now, it seems to me that the words "unlawful acts or acts of carelessness or negligence" probably restrict the liability of the Indian for his careless acts to such acts as might be denominated misdemeanors and felonies, and I do not think the restrictions ought to be so great. These Indians have great wealth, and by reason of their acts of carelessness of a nature which would render a white man liable to damages—

The CHAIRMAN (interposing). What is your suggestion, that the word "unlawful" be stricken out?

Mr. WILSON. Stricken out or use some term which is not so restrictive.

Now, of course, with reference to making void any debt that he might contract without the approval of the Secretary of the Interior, that works both ways. It would be a great help to a lot of these Indians and on the other hand it would be a great handicap to a man who might have some business capacity and it would simply keep him from going into business.

Senator FRAZIER. As I understand it, the Indian can now get into debt?

Mr. WILSON. They can now. That is another advantage of the guardianship system where a man's mental capacity is such that he can not handle money. He can be put under guardianship and, under the laws of Oklahoma, he would then have no capacity to contract at all.

Senator FRAZIER. Can an Indian contract a debt if he is under guardian?

Mr. WILSON. No, sir; he has not the legal capacity to contract a debt, nor to dispose of his property in any way.

Senator CAMERON. The guardian acts for him all the time?

Mr. WILSON. Yes, sir.

Senator FRAZIER. Is that rule enforced, so that they do not contract?

Mr. WILSON. Oh, yes; they do not do it at all.

Senator CAMERON. If the Indian would go out and contract a debt without the authority of the guardian, the guardian would not have any legal right to pay it?

Mr. WILSON. That is right, but he could investigate the matter, and if he found that the charge was a beneficial one he could ratify it with the approval of the court.

Senator CAMERON. The dealer could not collect it by law?

Mr. WILSON. No, sir. Another thing, I neglected to say is this, that these Indian bills limit the payments to the Indian for expenditures to certain amounts. I want to call your attention to the fact that especially these guardianship Indians can not get results from a certain fixed amount of money such as a white man can, for this reason, that if he does spend it there are people who will take advantage of him. He does not know values, and if he buys property he does not take the same amount of care a white man would. He may buy a car for \$2,000 or \$3,000 and keep it a year. The Indian is careless, and he will run the car without oil and burn out the bearings. He may get drunk and smash it up. It does not last the Indian as long as it would a white man. It is the same with other property, personal property, or the home. The children will scratch the furniture and walls and the woodwork of the houses. The Indian as a rule can not get as much for his money as the white man can, for that reason, and while \$4,000 or \$6,000 a year would be ample to take care of the ordinary person it may be that the circumstances surrounding some of these guardianships are such that the Indian ought to have more. The point is that in the administration of the department there is no flexibility, whereas under the guardianship system, unless they are tied up by restrictive rules, the guardian can do what is absolutely necessary.

Senator FRAZIER. When you say the Indian can not get as much for his money as the white man, what do you mean?

Mr. WILSON. Because he is incompetent to manage his own affairs. There is something he wants to buy, and he will spend his money inadvisably, and there is always somebody who will take advantage of him and charge him more or somebody that will sell him whisky or sell him dope or sell him things for more than they are worth. Not only that, but, as I explained before, when he gets things, he does not take care of them. A \$2,000 automobile won't

last an Indian as long as the average white man, because he does not take care of it. They are speed fiends. I will give you an illustration: I heard an automobile man relate of where an Indian came in and bought a car from him. When the Indian was negotiating for the car, he asked how fast it could run and the agent told him it could be speeded up to 90 miles an hour. The Indian took the car out and brought it back and said that the agent had lied to him, that the car could only run 75 miles an hour. They get out on these roads and they will run the cars without oil and burn the bearings out and do other damaging things. Their furniture, their clothing, and everything they do not keep as long, and consequently more things have to be brought for them.

I have not got a list of guardians or a statement reflecting the general conditions of the estates here; but here is an Indian who has \$25,000 saved up under guardianship. They are getting all the way from \$12,400 a year up to, some of them, nearly \$100,000, one over that. Here is one, \$28,000; here is a woman, \$12,000; another \$12,167. Here is one man recently put under guardianship with \$290, but he was tremendously in debt. Here is a woman who has got \$100,693. If she wants to blow in a little money, she is well enough fixed. She has got $4\frac{2}{3}$ estates. She gets \$50,000 a year now. She could spend a little money without being extravagant. Here is another one that has got \$52,000. Mr. Humphrey is her guardian. Here is another one that has \$18,000; another one, \$19,000; still another \$690; another, \$90. We have one here that has \$21,000, and here is another with cash and securities over \$20,000. Others, respectively, receive the following amounts: \$37,200; \$19,000; \$15,000; \$16,000; \$19,600. Here is one under guardianship a few months, \$188.

Understand, these Indians who have recently gone under guardianship were heavily in debt, and these debts have been paid. Here is one for \$3,500; another one, \$2,100. We have another here that has got \$134,000, and another \$313,000. Some of them have plural estates.

After there has been a good sized estate laid up by the guardian for the future maintenance of the Indian, I do not see any reason why the Indian should not enjoy life even if it involves an expenditure of more money than a poor person would have to expend. They have no business; they can not do anything. There is nothing to do except to live and exist and enjoy life. They have no business; they just sit around.

Senator KENDRICK. Has the guardianship system resulted in any effort on the part of the administrators or guardians to interest these Indians in taking part in the affairs of the community or in any legitimate field of occupation?

Mr. WILSON. Yes, sir; they do so, but it is hard to interest them, and most of them do not become interested. I read an instance here yesterday, a statement by Mr. Ruble who is cashier of a bank and the guardian of this Indian, Pendleton Strike Axe. He has got Pendleton at work out on a farm. He has a lot of cattle. He bought the cattle himself, but he went in debt. That is not as a rule profitable, but if they do it the guardians encourage them in it even at a loss, to keep them occupied. If they are occupied, they do not get into bad habits.

Senator KENDRICK. It conduces to everything involved in wholesome living—some field of occupation, something to keep them busy.

Mr. WILSON. I know of one old Indian who is not under guardianship. He is a full blood and has been chief of his tribe. He maintains a very nice farm, has got it well stocked, and he has a very nice farm building. That is Chief Lookout, and he maintains a nice respectable family, a family of good people, and he is a good man and a good citizen. He works and spends lots of money. I heard Mr. Wise say not long ago that every bushel of corn he raised cost \$5, but it is worth it to keep him occupied. He has got plenty of money, and it keeps him occupied. He and his family are good citizens. Even if he does waste his money that way, he has got it to waste.

That is all I have to say.

STATEMENT OF MR. PAUL N. HUMPHREY

Mr. HUMPHREY. I do not expect to use more than 5 or 10 minutes. Judge Wilson has covered the cases we have here with us, and I want to answer Senator Cameron's question first which he asked yesterday, namely, that with this information before the committee what is the necessity of going to Osage County to investigate? That is what I understood him to ask.

As I stated when I came down here the first time, it is impossible for us to bring these cases here. The department says there are 435 of these cases, and we have merely brought such cases as we could get together.

If the committee is of the opinion that the guardianship system is the proper system for the Osage Indians, there is no necessity for further investigation; but, on the other hand, if the committee is of the opinion that any such bill as is pending before the committee at this time should be passed, which in effect takes away the dual control and the checking system as provided by existing law, then I say the committee should come down and go carefully into every case and go over every fact before you take any definite action.

For instance, Senator Cameron, Joe Shum-kah-mol-la testified the other day, and I made this statement in my opening remarks also, that the Indians themselves were opposed to this legislation. Joe Shum-kah-mol-la went further, and he told you why they were opposed to it. He also told you that the people whom he represented—something over 200 in number, there being 130 on his petition, but they did not have time to get all to sign it—did not understand this legislation. They want this committee to come down there and investigate and have personally explained to them the provisions of this bill the same as they did at the time the allotment act, which is in effect a treaty, was enacted.

Joe Shum-kah-mol-la also told this committee that those Indians of which class he is a member were afraid to testify here and to come up here and tell you their true feelings. I do not state that as a fact; I call your attention merely to that testimony that he says they are afraid.

Yesterday we introduced into this record telegrams sent from this city by Mr. Peters to banks in Osage County and banks in Tulsa

County adjoining Osage, in effect telling those banks that if they did not withdraw their opposition to this bill the Indian money would be withdrawn from those banks.

Senator FRAZIER. Who is this Mr. Peters?

Mr. HUMPHREY. An oil man in Tulsa—and still owns a large per cent of the stock of the Fairfax National Bank. He doubtless carries a large deposit in the Exchange National Bank at Tulsa, to which he sent the other telegram. He is a prominent man in the city of Tulsa.

Senator FRAZIER. You do not know why he sent those telegrams?

Mr. HUMPHREY. I have not the slightest idea of it, except I know he is very close to Leahy. Mr. Leahy is his private attorney.

The CHAIRMAN. What is the position of Peters and Leahy on this bill?

Mr. HUMPHREY. Mr. Leahy has been before the committee and is in favor of this legislation.

In addition to those telegrams, there have been others sent down there to private individuals. They were confidential telegrams asking these men to withdraw their opposition to this bill, and that if they did not, certain things would happen to them.

The CHAIRMAN. Do you think the department had anything to do with the sending of those telegrams?

Mr. HUMPHREY. I do not think the department would do it in its own name. When I first came here, the first question I asked Mr. Peters was as to how he stood on this legislation. He told me he was not taking any stand. Following that conversation with him, I find that he sent these telegrams. That might not mean so much to you, gentlemen, but when you take in consideration also the facts of the department itself in 1920, when the present Snyder Act was pending, and when you consider the coercive methods used in 1920 to cause the banks and the guardians to withdraw their opposition to the 1921 act which extends the mineral rights, it does mean something in my mind. I want to read to this committee from pages 168 and 169 of the hearings before the committee on Indian Affairs of the House of Representatives, Sixty-second Congress, which testimony was taken in the city of Pawhuska. Mr. Snyder was the chairman of the investigating committee, and in his examination of Mr. Wright he says this:

The CHAIRMAN. And your principals in the department, at least, as far as the Commissioner of Indian Affairs is concerned, are also heartily in favor of the extension of the lease period?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You have used some pretty potent measures to bring people to your way of thinking on your proposition, because since we have gotten into this country I have had handed to me a statement sent out by you to the bankers of Oklahoma in which you state approximately that notwithstanding the fact that they are bankers and business men in the community, that they have not any right to use their personal judgment with regard to the matter that is so seriously being considered by all the rest of the people in the State. It seems to me that since you are so fully convinced that this is the right thing to do it ought not be necessary to start out with any such direct action as this is here. I never heard of any such thing as that before in all my political or business experience.

Mr. WRIGHT. If you will pardon me, Mr. Chairman, I am not responsible for that tribal resolution. That was not suggested by me to the council. That was directed, or rather the council submitted the resolution direct to the Commissioner of Indian Affairs at Washington. It was referred to me in a communication directing me to investigate the matter and submit a report and recommenda-

tion. I merely carried out my instructions in that respect. I do not think that ought to be charged to me.

The CHAIRMAN. If you had given me time, I would have asked you whether you were responsible for it or not. I did not think that you were. Since there is no other name signed to the communication, naturally I thought that you either did instigate it on your own volition or were ordered to do so by your superiors, and if there is no objection by the committee I am going to put this whole communication into the record.

Mr. WRIGHT. Pardon me again, Mr. Chairman. It is the money of these Indians that is deposited in these banks. It is not Government money but their own money.

The CHAIRMAN. The citizens are also depositing their money in the banks.

Mr. WRIGHT. They do not have to put it into the banks.

The CHAIRMAN. The producers of oil are putting their money in those banks, and they are entitled to the same consideration that the Indians are.

Mr. WRIGHT. This is Osage tribal money.

The CHAIRMAN. That does not make any difference. The bank is paying a rare rate of interest for that money, and, in my judgment, the Commissioner of Indian Affairs is going away out of the way when he attempts to control the mind of any citizen or bring a drastic action such as that to bear on him. I want to go on record in this matter on that. It would not be tolerated for a moment in any other part of the country that I know of, and I should think that the bankers in this part of the country would rise up against it.

Mr. WRIGHT. With reference to the guardians, it was not thought by the council that it would be to the interest of the wards if their guardians were insisting on this oil being taken from them in 1931 without any payment or consideration whatever.

The CHAIRMAN. I want to say to you now, and the gentlemen of this committee and those present, that if I had not come into this territory with an open mind and with the hope of being able to assist in this matter, that one bit of propaganda alone would have turned me against the entire proposition, and I do not care to ask you any further questions. Mr. Carter, you can take the witness.

That statement came from Mr. Snyder. Mr. Wright denies having anything to do with it.

Mr. WRIGHT. I object to extracts of the testimony then taken going in, unless the answers are put in.

Mr. HUMPHREY. I do not charge him with having anything to do with it.

Here is the resolution which is in effect the same thing as was contained in the Peters telegram:

Resolved by the Osage Tribal Council, duly in session in the city of Washington on the 22d day of January, 1920, and it is so resolved that the council hereby requests the honorable Secretary of the Interior and the Commissioner of Indian Affairs to withdraw from any bank whose officers or directors use any influence to prevent the granting of the extension of the mineral period all funds of the Osage Tribe deposited therein, and that they use their influence and efforts to cause to be removed any guardian of the estate of an Osage Indian who is using his efforts or influence to prevent the granting of the mineral period.

That is the tribal council resolution passed in the city of Washington, in effect threatening to withdraw money from banks and guardians if they did not cease their opposition to the bill then pending before Congress. Now, we have that same situation pending now. Mr. Peters, and I do not know whether he acts on behalf of the department or not, sends that same character of a telegram intimidating the people of Osage County.

Mr. Wright says in reply to Mr. Snyder's first statement:

If you will pardon me, Mr. Chairman, I am not responsible for that tribal resolution. That was not suggested by me to the council. That was directed, or rather the council submitted the resolution direct, to the Commissioner of Indian Affairs at Washington. It was referred to me in a communication directing me

to investigate the matter and submit a report and recommendation. I merely carried out my instructions in that respect. I do not think that ought to be charged to me.

That is Mr. Wright's reply to Chairman Snyder's statement. I mention that only for the purpose of showing that the same coercive methods that were adopted in 1920 to withdraw opposition to the mineral rights extension bill are again, as I view it, being used in this instance.

The CHAIRMAN. Do you mean that that action and the telegram that Mr. Peters sent both purport to have originated with the council?

Mr. HUMPHREY. That is true.

The CHAIRMAN. Do you mean to say that the council is doing that kind of thing, or that the department is doing it?

Mr. HUMPHREY. I have my own opinion of it. You have had before you the full blood Indians, who come here and tell you that the tribal council does not speak for the full bloods. They will also tell you that every time the council comes to this city, they are under the complete domination of the Department of the Interior.

Now, I do not charge Mr. Woodward or Mr. Wright or the department with such crude ideas as to send these telegrams over their own signatures. I do not think they would do that, but it is my own opinion that that telegram was sent, and other telegrams, with the knowledge of the people who are here asking for this legislation, and that it was sent for the purpose of intimidating and coercing the citizens and the banks of Osage County to withdraw their opposition to this bill. That is the purpose of it.

Mr. WRIGHT. That is your own conclusion?

Mr. HUMPHREY. That is what I said.

Mr. WRIGHT. If I should say I never heard of that telegram, would you say that is correct?

Mr. HUMPHREY. Yes, sir.

Mr. WRIGHT. If I say to you that, so far as I know, the department had no information in any shape or form in regard to that telegram, would you say that is correct?

Mr. HUMPHREY. If you said so, I would say it is true.

Nobody is charging any untruthfulness. I will say that I have been intimately associated with and have known Mr. Wright since 1912, and that I think Mr. Wright is the best man that can possibly be put in charge of the Osage Indian Agency. When you look at the Indian question merely from the point of the financial feature of it, I do not think there is any man who can beat Mr. Wright. On the other hand, I do not think Mr. Wright will contend that the department can give the Indian what I may denominate as the personal touch, the personal civilization of the Indian, that the guardian does. I do not say that in a spirit of criticism. It is just the fact that he is not equipped and can not be equipped to give the Indian the same personal attention that the guardian does.

The CHAIRMAN. The reason I asked those questions a while ago, I have had some correspondence with people who will write me confidently and who seem to be afraid to have their positions made known on this question. I am trying to get at where the fear comes from. That is what I want to know.

Mr. HUMPHREY. I can only give you my idea of it.

Now, I want to call your attention to one other point in connection with the provisions of this bill. Under this bill you are placing all the power with reference to the investments, with reference to the expenditures, with reference to the saving of these funds in the hands of the Secretary of the Interior, acting through the superintendent of the Osage Agency. That is in effect what this bill does. These millions of dollars you propose to place down there in the hands of the Osage Agency, to be handled as the superintendent thinks best.

Mr. Wright is a bulwark against graft—there is no question about it—but Mr. Wright can not be there always. The last three superintendents in charge of the Osage Indian Reservation left there under a cloud, at least some of them, a cloud of crookedness.

Senator FRAZIER. Where did they go?

Mr. HUMPHREY. One of them is now a high official in the Prairie Oil & Gas Co. I do not know where the other two are but, anyhow, they left under a cloud. Mr. Wright is a bulwark against graft, but you can not tell who is going to be there in the future, and yet you are here proposing to legislate for the future and place in the hands of some future agent the power, if he should see fit, to get his hands on this money.

Mr. Wilson has shown you that even in these three cases if the final appellate court shall say that the guardian three years ago, at the time he made his settlement with the ward, was \$5,000 short, or whatever the amount may be, and that he is in debt to his ward—if the court shall finally determine that that money is due from the guardian to the ward then the bondsman has got to pay. The superintendent of the agency is not under bond. In every guardianship case the guardian is under bond for double the amount of property which is entrusted to him, and there never has been a single case in which Osage Indians have lost one cent by reason of the defalcation of a guardian.

Senator FRAZIER. Who pays for these bonds?

Mr. HUMPHREY. It comes out of the estate. There never has been a case in which the Indian himself or his estate has lost one cent by reason of a defaulting guardian. There has only been one case of that kind and I happened to represent the heirs in that case, and the bondsmen themselves came in and paid something like \$3,600 into that Indian's estate and made good the shortage. That is the only case I have in mind of that kind.

Now, as I said a moment ago, Mr. Chairman, if the committee is satisfied that the dual-check system, the court-control system, is the proper system, then there is no need of any further investigation; but if, on the other hand, you feel that this law should be amended, then we feel it is your first duty to come down and see what the Indians want who signed that petition. One hundred and thirty signed it, but Joe Shum-Kah-Mol-La could have gotten all the Indians to sign it.

I have a few questions here that I want to submit to the committee, and I want Judge Humphreys to answer them. My first question is, How many appeals were taken by the Osage Indian office from the judgment of the probate court to the appellate courts of our State previous to the time he came down there as probate attorney? I charge, and state it as a fact, that not one appeal was ever perfected

from a decision of the county judge to the appellate courts of our State previous to Judge Humphreys's coming there.

The second question I want to ask, and I think the committee should have the information, is, How many reports were checked, vouchers examined, and guardians requested to bring into court evidences of their securities and evidences of their cash before Judge Humphreys came there and acted as probate attorney? I charge that that was not the practice before Judge Humphreys came there, and that it was a maladministration of existing law rather than a lack of law.

The next question I want to ask is, how much time was spent by a representative of the department in the courts looking after the probate matters of the Indian members of the tribe previous to the time Judge Humphreys came there? I tried to show that on the opening day, but did not succeed.

The next question is, how much latitude is given the Osage probate attorney in handling probate matters? Judge Wilson touched upon that proposition in the fact that there is a layman at the head of the department. Judge Humphreys, who is the probate attorney, formerly was for four years a county judge, and he is well versed in the probate laws of Oklahoma and doing wonderful work; but before he came down there the office was paying no attention to that kind of work.

I also believe the proponents of this measure should state whether or not it is a fact that every case that has been presented to Congress by them, by Judge Humphreys, has not been prepared and presented by Judge Humphreys under direct supervision and the direction of the superintendent of the Osage Agency, who directed that that particular case be prepared and presented to Congress. I charge that that has been done, and I further charge that the cases presented to Congress have been presented not with a view to giving Congress and the Congressional committees the true facts that exist with reference to guardianships, but for the purpose of inflaming the minds of Congress and presenting cases which they think would more naturally cause Congress to feel that the guardianship question in Osage County is a failure.

I would also like to have Judge Humphreys state whether or not every case complained of by him and presented in this record, where objections were found to that case, did not arise before he came there as probate attorney.

I would also like to have him show, or have someone else show, where the tribal attorney of the Osage Agency or anybody in their behalf ever appeared in the Federal or State courts of Oklahoma to defend an Osage Indian charged with crime. I state it as a fact that not one case of that kind has happened, that 50 per cent of the criminal docket of the Federal Court for the Western District of Oklahoma is made up of criminal cases from Osage County, and that at no time has the tribal attorney or the agency appeared to defend the Osage Indians charged with these crimes. The Indians have had to go out and employ private counsel, and the guardians have had to.

I challenge the department to bring before this committee reports showing where they have gone out and investigated the health and the sanitary conditions of the Indians under their control, and to

state to this committee just what personal attention has been given by the department with reference to sanitation and the health and the living conditions of Indians under their jurisdiction. I state that practically no attention whatever has been given along those lines.

Now, Mr. Chairman, I want to thank the committee on behalf of Judge Wilson and myself, first for the very courteous treatment we have received. It is a big matter, it is a tedious matter. Any failure in our presentation we do not want you to charge up against the dual control and guardianship system. We want you to take it as a failure of ourselves and not as a failure of the system.

I am probably more radical than any of the people here with reference to guardians. Rather than restrict appointments of guardians, I would enlarge them, because it is my judgment that the guardianship system and the probate court system is the salvation of the Osage Indian.

We want to thank you both on our own behalf and on behalf of the citizens of Osage County.

STATEMENT OF MR. ARTHUR WOODWARD, TRIBAL ATTORNEY, OSAGE INDIAN AGENCY

Mr. WOODWARD. I want to take just as little time, Mr. Chairman and Senators, as I can in answering a few of the statements that have been made by the opponents of this bill.

The CHAIRMAN. Mr. Woodward is the tribal attorney for the Osages.

Mr. WOODWARD. I realize that the members of the committee are quite tired, for extended hearings have been had, and, more than that, I realize that this session of Congress is not very far from closing and if we are to get any legislation we can not waste very much more time on these hearings.

I want to refer for a moment to the statements made by two or three members of the tribe before the committee last week. They came here to oppose this bill and to ask that action on it be delayed until a committee could go down to Osage County and investigate the conditions. The chief spokesman for the trio that I referred to was Joe Shum-Kah-mol-la. I want to call the attention of the committee to the fact that this proposed legislation is not new. It did not arise this year. On February 8, 1922, a similar bill was introduced in the House, and on January 16, 1923, another such bill was introduced in the House, passed the House, and was reported out of the Senate Committee, but owing to a complication of things in the Senate at the close it was not acted upon by the Senate. So, since early in 1922, the Osages, through their tribal council, have appeared before the members of the House and Senate Committees asking for similar legislation to that contained in the bill which you are now considering. A member of the council who was here at the time and who was advocating this very legislation in 1922 was the same Joe Shum-Kah-mol-la who appeared before you last week opposing this legislation and asking for delay.

I can explain in just a word or two why that is. Joe Shum-Kah-mol-la and Edgar McCarthy come from the town of Hominy in Osage County. There is to be an election held in Osage County on the

first Monday of June, at which time a new chief and tribal council will be elected. Edgar McCarthy is a candidate for the position of principal chief of the tribe, and Joe Shum-Kah-mol-la is a candidate for a place on the council. When they were up here in January this year on this same legislation, they were spreading the propaganda among the Indians not to have this bill acted on now, but to wait until after the tribal election which will be held in June and "We will get you a bill through which will give you all of your money, as you used to get it under the act of, 1906."

Those Indians are playing politics here before this committee in asking for this delay, in order that they may have that plank in their platform from now until the second day of June. It is a matter of record that Joe Shum-Kah-mol-la was a member of the council which voted for the resolution indorsing a similar bill and that he was here advocating that bill in February, 1922.

With regard to the statements made by the opponents of the bill, to the effect that they have not had time to prepare their case. This matter has been pending for over two years. Two years ago the opponents of this bill filed with the House Committee on Indian Affairs a digest of all the guardianship cases then pending in Osage County, but for some reason that compilation has not been submitted to this committee. I take it that the results were not satisfactory to their side of their case and they did not care to have it introduced.

So much for that.

It might be well to refer for just a minute to what the situation is in Osage County with regard to the existing legislation. Much has been said by Judge Wilson with reference to the act of 1912. In 1912 Congress passed a law which conferred jurisdiction upon the probate courts of Oklahoma as follows (reading):

SEC. 3. That the property of deceased and orphan, minor, insane and other incompetent allottees of the Osage Tribe, such competency being determined by the laws of the State of Oklahoma, which are hereby extended for such purpose to the allottees of said tribe, shall in probate matters be subject to the jurisdiction of the county courts of the State of Oklahoma, but a copy of all papers filed in the county court shall be served on the superintendent of the Osage Agency at the time of filing, and that said superintendent is authorized—

Attend carefully to the reading—

whenever the interests of the allottee require, to appear in the county court for the protection of the interest of the allottee. The superintendent of the Osage Agency, or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators and guardians or other persons having in charge the estate of any deceased allottee or of minors or persons incompetent under the laws of Oklahoma, and whenever he shall be of the opinion that the estate is in any manner being dissipated or wasted or permitted to deteriorate in value by reason of the negligence, carelessness or incompetency of the guardian or other person in charge of the estate, the superintendent of the Osage Agency or the Secretary of the Interior or his representative shall have power, and it shall be his duty, to report said matter to the county court and take the necessary steps to have said case fully investigated and also to prescribe any remedy, either civil or criminal, as the exigency of his estate may require, the costs and expenditures of civil proceedings to be a charge upon the estate of the allottee or upon the executor, administrator, guardian or other person having charge of the estate, as the county court shall determine.

Now, that is the exact wording of the act of 1912 which gives the Secretary of the Interior or the Superintendent of the Osage Agency the right, whenever he is of the opinion that an estate is being mis-

managed, to appear before the court and make his objections. That is the law which has so frequently been referred to by Judge Wilson as the power which the Government now has, through the Department of the Interior, to control these estates which are in the hands of the courts.

We deny that there is anything like the authority or power vested in the Department of the Interior or in the Osage Agency as is contended by the other side in this case. This act prima facie gives the entire jurisdiction of these matters to the court. It is in the hands of the court, and the duty and the power is only in the court and in no other body. The Department of the Interior can not control the appointment of a single guardian; they can not discharge a single administrator. When some estate is being mismanagee, the superintendent of the agency can only appear in court and protest. It was never contemplated, it was never intended by Congress at the time this act was passed that the superintendent of the Indian agency, or a representative of his, should be in the office of the probate court or in the courtroom itself, day in and day out, watching the probate court to see that he did his duty.

Judge Wilson has said that from 1912 until the time of the passage of the act known as the Snyder Act of 1921, the relationship between the court and the agency was harmonious. In those days the payments to the Inidans were not so large as they are now, and the number of guardianships was nothing like so large as it is now. There were comparatively few of them.

There was a man designated during that time, from 1914 or 1915 on down to 1921, whose duty it was to attend hearings on probate matters in the probate courts, and I know that was done because from 1915 to 1917 I did that myself, but it did not take all of my time because the guardianships were comparatively few and the expenditures of funds were not nearly so frequent and it was not necessary to be in court during all the day and six days a week. Whenever a matter affecting an Osage Indian came up it was the custom of the county court to advise the agency and I would go down and watch the proceeding and take part whenever I thought it necessary. It is true that in those days the probate courts would listen to the objections of the agency, and it was very seldom in those days when anything was done over the protest of the agency. That continued to be true with my successors who looked after that branch of the business until 1921.

But what I have just said is not true at all with respect to the period following the passage of the Snyder bill. The probate court took the Snyder Act as an offense, as an insult to himself, and these gentlemen who are here know I am speaking the truth. It became notorious over the county that he was against that feature of the Snyder Act which he thought infringed upon the jurisdiction of the probate court.

Mr. HUMPHREY. He is not the present county judge?

Mr. WOODWARD. No, he is not. He resigned last summer; I think it was about July. While Judge Sturgell was in office, after March 3, 1921, the relations between the agency and the county court were not harmonious, and I have been frequently told by the law clerk who looked after probate matters during that time, that it was useless to make any suggestions to the probate court because he

was sure to decide against what the agency recommended. That was the custom.

Following the act of 1921, which was an act following the investigation made by Mr. Snyder's committee in 1920, the funds of Indians who did not have certificates of competency were handled in a far different manner from what they were under the allotment act of 1906. I am telling a good bit of this for Senator Kendrick's benefit, because he has not been at previous meetings. Under the act of 1906 the Indian was entitled to receive and did receive without any restrictions whatever all of his accumulated funds coming from oil, gas, or any other source, every three months. If it was \$1,000, it was paid to him. He could do as he pleased with it. There was no supervision by the department; there was no control over either the Indian or his money. As a result of that condition, when payments began to get larger, after the expiration of the Foster oil lease, when new regulations were made governing the oil business—

Senator KENDRICK (interposing). This was not under the guardian system that the Indian was allowed to spend his money in his own way?

Mr. WOODWARD. No, I am talking about conditions under the act of 1906, which is an act directing the Secretary of the Interior to pay to these Indians each quarter the money which belonged to them. That has no reference to guardianships at all. The payments after 1916 began to increase, and a subcommittee of the House committee came to Pawhuska in 1920 and found that many of the Indians were not getting very much benefit from the payments being made to them. They thought it wise to pass the act of 1921.

In that act they provided that Indians who did not have certificates of competency should receive \$1,000 each quarter and that minor Indians should receive \$500 a quarter, which would be paid to the parents for the education of the minor. The act of 1921 also provided that all of the money which was due to an Indian who had a legal guardian should be paid to that legal guardian. There is where conflict commenced.

Senator CAMERON. That is the law on the statute books now?

Mr. WOODWARD. Yes. It was widely advertised amongst the full-blood members of the tribe who, generally speaking, are the incompetent Indians not having received certificates of competency, that if they would have guardians appointed the guardians would receive all the money to which they were entitled and they could get it indirectly through the guardians when they could not get it under the law through the department. Under the law they could get but \$1,000 a quarter from the agency, and that \$1,000 would be expended under the supervision, as the law requires, of the superintendent.

Now, Judge Wilson, all through his remarks, I think very unfairly, has referred to the department and to the agency in the administration of the law and not to the law itself. He has intimated that all of these things complained of by the Indians was the result of departmental administration and not the result of the law. I do not know that the judge meant to do that, but his statements are in the record just the same to that effect.

After the act of 1921 was passed, regulations were promulgated by the department as provided by that law as to how this money should be paid, and I want to read one paragraph of those regulations (reading):

A statute, of course, is to be construed in the light of its obvious policy and the manifest intent here is that incompetent adults, including those having legal guardians, are to have a quarterly allowance of \$1,000 for maintenance and support and that each minor is to be paid \$500 quarterly for a like purpose, including education. The remainder of the shares due such members is to be conserved for their future benefit by investing in certain securities designated in the act or deposited in bank to their credit. To hold otherwise would defeat the evident purposes of the act, for as pointed out by the superintendent, if the entire share is to be turned over to legal guardians for expenditure without supervision it would be a comparatively easy matter for the remaining incompetent members of this tribe to procure appointment of legal guardians and thereby obtain release of all their funds from further supervision after payment to such guardians. That probate courts of the State, and the guardians appointed by these courts, as well as the superintendent, are equally bound by laws of Congress relating to these payments, and the act of March 3, 1921, is the most recent expression of Congress in the matter.

That is the opinion of the solicitor for the department, and these regulations were issued about October or September, 1921. The date is not on there.

The act of 1921 provides that all payments, both to minors and to incompetent members of the tribe, shall be under supervision. A case is now pending in the Supreme Court of the United States, which was argued in January of this year, in which the question is involved whether or not the legal guardian is limited to \$1,000 a quarter in his expenditures the same as the superintendent is limited. That has been a controverted point between the court and the department ever since the passage of the act of 1921, the courts of the State holding invariably that the guardian was not limited to \$1,000.

Naturally, that makes guardianship attractive to the incompetent Indian, who, under the act of 1921, can only get \$1,000 a quarter through the agency. He has a guardian appointed because he knows that he will receive, and they all do pay, more than the amount limited to the superintendent. That has been the cause of the big increase in the number of guardianships in the last three years, and in my opinion it will only be a matter of a very short time, unless Congress changes this law before every Indian who does not have a certificate of competency will have a legal guardian, because it is certainly human nature to get as much money as one can.

Now, with regard to the Osage Indians, Senator Kendrick, there is a financial situation probably that does not prevail in the Indian tribes with which you are familiar. In the last three years the amount that has accrued to the benefit of each member of the Osage Tribe, minor and adult, has averaged \$10,000. If he has a certificate of competency, he got that \$10,000. If he has not a certificate of competency, and does not have a guardian, he received \$4,000 and what taxes he has to pay are paid in addition to that amount. The balance of the payment is placed to his credit in the manner provided for by the act of 1921. The result of that is, that those Indians have accumulated large amounts of money to their credit, running all the way from \$25,000 or \$30,000 to, I believe, over \$100,000, depending upon the number of headrights each particular Indian

may have; and the further result of it is that ever since the passage of the act of 1921 that class of Indian has been trying to get relief. What they call relief is the operation of receiving more of their money, and there is no use denying the fact that these Indians want that part of the act of 1921 repealed and want their money paid to them as it was paid to them under the act of 1906.

That is what these Indians want who were before this committee and the other committees.

Senator KENDRICK. I can understand that, and the motive behind it. The question I want to ask you is, does the bill as proposed propose to do away with the guardianship principle, or to restrict it?

Mr. WOODWARD. Yes, sir. I answer your question, and then I will explain it. Much has been said about the department and the department's bill. From the passage of the act of 1921 down to February of this year, every council has passed as impressive resolutions as they knew how asking for changes in the act of 1921. Those resolutions have been filed with the different committees and also with the department each year, and the department, to most of the propositions which the council has put up to them, has lent its indorsement, consequently this is called a department measure; but I want to make it clear to the Senators that the bill introduced in this House by Senator Harreld in December of last year was drafted by the Osage Council and introduced without any change by the department and were sent up here with a letter recommending the passage of the bill. They are Osage Indian bills, coming from the council which is elected by all members of the Osage Tribe of Indians.

The CHAIRMAN. Those bills have been changed very materially now.

Mr. WOODWARD. That bill has been changed materially since it was introduced in the House and Senate. In that connection I want to file certain amendments which the Indian tribe want made to the bill as it passed the House.

About all this committee has heard concerning this bill is the guardianship feature of the bill. There are many other things in the bill that are to my mind just as important as that feature of it, which have not been discussed at all. There is no contest by anybody against the other phases of the bill so far as I know. Certainly nobody down there is making any objection to that clause permitting these Indians to have more money. In fact, that is a very welcome provision not only to the Indians, but to everybody, and this bill does provide for considerably increased payments but not quite in the form which the Indians would like to have them.

There are also other provisions in the bill which relate to the protecting of the property which the Indians may have and which also provide that an Indian can not contract debts unless with the approval of the Secretary of the Interior, and while the latter provision has been criticized, it has not been vigorously opposed, perhaps because that places the restricted class of Indians in the same position of the Indians who have guardians. It would not be very consistent for the proponents of the guardianship system to say that an Indian under the supervision of the Government should be permitted to contract debts when an Indian under their supervision should not be permitted to contract debts. The reason that that feature has

been placed in the bill is that since the passage of the act of 1921, which was intended to keep an Indian from getting into debt, they have accumulated upward of three hundreds of thousands of dollars of debts which have not been authorized by anybody and which by some method or other the creditors somehow or other hope some day to collect.

Senator FRAZIER. Those under guardians?

Mr. WOODWARD. Those not under guardians. It is very frequently done, and it is almost a custom that an Indian is permitted to become heavily involved, say several thousand dollars, and then the creditor goes to court to have a guardian appointed to pay those debts. Since the act of 1921, the Indian does not pay those debts out of his money. The Government can not pay them, because the act of 1921 prohibits it, but he gets a guardian and then under the law the Government is required to pay that guardian all of the money which the Indian has. Then these creditors file their claims with the county court and a hearing is had on them and the court almost invariably orders them paid. The creditors get their money in that way, defeating by indirection the very obvious purpose of the act of this Congress of 1921.

Senator FRAZIER. The fact that the Indian has incurred these debts is used as a basis of argument for the appointment of a guardian?

Mr. WOODWARD. That is, I think, the principal reason. There are many guardians appointed for Indians in Osage County that we do not think need guardians.

Senator FRAZIER. Hasn't the act of 1921 a provision authorizing the department to pay all those debts?

Mr. WOODWARD. Not since 1921. That act provides that all debts on the date of the passage of that act shall be paid, and there were filed under that provision, \$1,300,000 worth of debts which had accumulated against these Indians in the few years prior to that time, during which time the same Indians had received \$8,000,000. Those debts were paid, but there is no provision authorizing the payment of any subsequent debts.

Senator FRAZIER. Is not the probate court simply carrying out what Congress authorizes to be done?

Mr. WOODWARD. No, sir; those debts are specifically referred to in that act as those outstanding on March 3, 1921. It authorizes the superintendent, not the court, to pay those debts.

The CHAIRMAN. Congress did adopt the principle of paying just debts not created by warrant of law.

Mr. WOODWARD. Those debts were created by warrant of law.

Senator KENDRICK. Congress legalized the debts made prior to the enactment of the law?

Mr. WOODWARD. They were legal, but they provided a means for paying them, the just debts outstanding on that date. After they were reviewed by the superintendent and certain adjustments made which he thought were right and proper, the debts were paid; they were cleaned up quite a while ago.

These other debts, \$300,000, are unauthorized debts contracted since the passage of the act of 1921 and which can not be paid unless the Indian gets a guardian.

Senator FRAZIER. Could they be paid if this bill were passed?

Mr. WOODWARD. No, sir.

Senator FRAZIER. Under the present provisions of the bill?

Mr. WOODWARD. No, sir. I was going to give it as my opinion that the members of the Indian committees in 1921 would permit no such provision in the bill, because it would contravene entirely what they had in mind at that time.

There have been some references made to mismanagement of these estates, and it has been suggested that we were unjustly attacking the probate laws and the probate system of Oklahoma and that such attack was unwarranted. I want to remind the Senators of the fact that in presenting this matter for the Osage Tribe, we have based our position on two grounds, first, that it is the duty of Congress to look after these wards of theirs and they should not, to use a slang expression, pass the buck to any other tribunal. They have the machinery, through the Department of the Interior and the Osage Agency, properly to take care of the Osage Indians. There is no lack of funds, and there is every reason in the world, if these Indians want their business handled through the department as council after council has petitioned Congress to do, to let Congress take care of their own wards.

The second proposition is that it is costing an immense amount of money for this probate system in Oklahoma, which cost is unwarranted and unjustified, and nothing can excuse Congress for saddling on the Indians this heavy debt if amendments can be made to the act of 1921 which will take away from the Indian the excuse he now has for having guardians appointed. In ninety-nine cases out of a hundred the purpose of having a guardian appointed is to get more money. If you can regulate this so that a guardian can not pay any more to the Indian than the Indian can get from the department, requests for guardians will cease and the Indian won't have the temptation to spend several thousand dollars a year uselessly because he will get then the same attention and just as good attention from the department as he can get through the guardian.

Senator KENDRICK. Do you believe that fact applies literally? Is it possible for the superintendent of an Indian tribe, with all the diligence he may exercise, that he can give the personal attention in looking after the Indian and guiding and directing and advising him that a guardian can, in case, of course, that the guardian was the type of man he ought to be?

Mr. WOODWARD. If you will pardon me in skipping that, Senator, Mr. Wright wants to speak on that very point when I get through. He will show you what they have been doing in the past and what they can do in the future.

We have shown that this expense now runs between \$300,000 and \$400,000 a year, and under the bill which has been referred to as correcting these evils a schedule of fees is allowed which I will admit is considerably in excess of what is now charged in our county. I think that this bill was aimed principally at the five tribes where, I have been told, expenses for managing estates run as high as 60 per cent of the estate. We make no such representations to this committee with regard to Osage County affairs. We have, I think, been pretty conservative in our statements, and say that ours run all the way from 8 per cent to 15 per cent of the estate. We are telling the committee that that expense is unwarranted. It has already been admitted that the affairs can be handled more cheaply

by the department, and the only point our opponents have endeavored to make is that the personal attention given the Indian under the guardianship system warrants this extra cost.

It is admitted that we can conserve, even at 4 and $4\frac{1}{2}$ per cent interest, far more money, and do conserve it, as the figures will show, than the guardian can save up at 7 per cent, for this reason—that the guardian never invests all the money turned over to him. In the first place, he expends over \$4,000 a year; in the second place, he has got the expenses to deduct from what he gets; and in the third place he always carries a balance. The figures here will show that in 50 guardianships there is over \$150,000 carried in the banks not drawing any interest at all. Since that act of 1921, all of the money in the hands of the department is drawing interest all the time. Four and one-half per cent, which is the average rate, will, year in and year out, bring a far larger financial return than the spasmodic 7 per cent which the personal guardian gets.

The CHAIRMAN. Doesn't the State law charge the guardian a certain per cent of these funds that come into his hands?

Mr. WOODWARD. I never heard of such a law.

The CHAIRMAN. Strictly the law does, but he can get himself excused from that.

Mr. WOODWARD. There is certainly no reference to such a procedure in the Fry law, and I do not know of any such statute, Senator. I do know that there is a large amount of funds lying idle in our banks in Oklahoma.

Mr. WILSON. There is a statute charging a guardian with interest if he negligently permits funds to lie idle.

Mr. HUMPHREY. There is a rule of the court that guardians shall not hold more than \$1,000 in reserve. There was such a rule in effect, but I do not know whether it is enforced.

Mr. WOODWARD. I know it is not enforced, because the reports show in some instances balance as high as \$16,000 that are not invested and not drawing any interest.

The CHAIRMAN. The courts have a habit of excusing them when they show due diligence.

Senator CAMERON. Possibly they have so much money down there that they have not got a place to loan it.

Mr. WOODWARD. You remind me of another fact. We have deposited in banks of Oklahoma, in over three hundred banks in Oklahoma, over \$10,000,000 of Indian money. We had to buy \$7,500,000 of Liberty bonds last year because the banks could not absorb any more of that money. They had all of that money that they could take. They are limited to the amount of their capital stock and surplus. We had to buy Liberty bonds with it. They pay, I think, from 4 to 5 per cent on time deposits and those time deposits are secured by surety companies.

Senator KENDRICK. You mean that your Oklahoma banks pay the Indians that on time deposits?

Mr. WOODWARD. On time deposits.

Senator KENDRICK. Four to five per cent?

Mr. WOODWARD. Yes, sir. The average time deposit rate in our county is 4 per cent.

The CHAIRMAN. The guardian, however, can make the same kind of loans.

Mr. WOODWARD. Yes; and he does.

Judge Wilson has talked very seriously about how Osage County, Okla., will be crippled under this law, and the judge jumped to the conclusion that if this law is passed these matters will be handled in a certain way.

In the first place, let me state that there is no objection at all to this bill being modified so that any Indian who really wants a guardian can have that guardian appointed and that he shall be paid just as much money as any other guardian may be paid. With respect to the blind and physically incompetent Indians that have been referred to here, I want to tell the committee that it is our intention that they shall have guardians to look after them if they so desire and it is not the purpose to do away with that kind of guardian at all; but the purpose is to stop appointing guardians for Indians who do not need guardians, because the time is coming in a very few years when these Indians won't have \$1,000 a quarter paid to them. We are looking toward that day and we want to conserve, as much as we reasonably can, this money.

There is one other matter that I want to refer to since it has been mentioned by the other side, although I do not think it has any bearing on this bill, and I only refer to it because they have. That is with respect to alleged coercion being used by somebody—they say Mr. Peters—to intimidate people in Oklahoma and keep them from opposing the passage of this law. Telegrams seem to have been sent by Mr. Peters from Washington to a bank in which he owns practically the control in Osage County and another bank in which, I understand, he is a large stockholder in Tulsa asking the officers of the banks to withdraw their opposition to this bill. I know a little something about those telegrams. Mr. Peters was in Washington and attended a meeting of the council held here on or about April 1, and he heard the members of the Osage council talking about the advisability of asking the Department of Interior to withdraw their funds from banks which were opposing laws which the Indians wanted passed. They could not see any harm, and I can not see any harm, in an Indian using the same force and power which he has to obtain legislation which he wants that a white man would be permitted to use. I can not see anything outrageous, or why it should be considered a crime for these Indians wanting legislation to take away their money from those who are opposed to their interests. I can not see why there should be anything derogatory about that. The department had nothing to do with this matter and the department does not know anything about it yet, so far as I know.

That is the explanation of the two telegrams about which certain hints have been made.

The CHAIRMAN. The Indian council does not control these deposits?

Mr. WOODWARD. No, sir.

The CHAIRMAN. Why would the banks be so scared at the acts of the council?

Mr. WOODWARD. I do not know that the banks are scared, Senator.

The CHAIRMAN. Well, they were. Here is the owner of stock in the bank who wired, "You had better let up."

Mr. WOODWARD. A lot of the banks have sent telegrams and letters to this committee against this legislation. Why there should be all

this propaganda against this legislation which the opponents of the bill admit affects approximately 200 Indians I do not know. Why the newspapers have written the most burning articles against this legislation I do not know. I can not believe that if such restrictions are placed upon the expenditures of 200 Indians, that Osage County and the State of Oklahoma is going to pot. I believe the machinery will grind just the same, but to believe those letters and telegrams you would think that the whole prosperity of the State of Oklahoma hinged on the action taken with regard to 200 Indians. It is a mystery to me, I confess.

I do not think there is any necessity for my occupying the committee's attention any longer.

Senator KENDRICK. I wanted to ask you to state again, if you please, your attitude in reference to guardianships and the limitations you would place upon them.

Mr. WOODWARD. In the bill that the tribe introduced there was a provision which reads that the Secretary of the Interior might pay the income either to the Indian direct or pay it to the guardian. That was done for this reason—because it was realized that there were certain cases where perhaps a guardian could do the business of the ward a little better than the agency could do it. It is a fact, Senator, that up until 1921, the superintendent of the agency filed petitions for the appointment of several guardians because, as I stated before, there was no provision, there was no jurisdiction, no control at all over payments until the passage of the act of 1921, and if an Indian needed some special care the only way to get it was to take advantage of the act of 1912 and go to the probate court and have a good guardian appointed. In the case that Judge Wilson cited of that imbecilic girl, the superintendent of the agency filed the petition to appoint a guardian in that case in 1919.

However, we contend that since the act of 1921 the intention and purpose has been set out that the department should do this work. It was an attempt to do away with the necessity for them, and the bill introduced by the tribe provided that the department could either pay direct to the Indian or to the legal guardian the funds which accumulated to his credit, and there is no objection to that being done.

Senator KENDRICK. You mean that the law of 1921 authorized the department to fulfill the functions of a guardian? Is that the idea?

Mr. WOODWARD. That was the intention of the law; yes, sir, because they limited the amount to \$4,000 a year. That could be spent on behalf of the incompetent Indian and provided that it should be paid under supervision. That was not the purpose of the language of the act of 1906, the allotment act, under which the expenditures were previously made.

Senator KENDRICK. Well, then, does the bill proposed do away with the appointment of any further guardians or any other guardians?

Mr. WOODWARD. It provides that no guardian shall be appointed except upon the request of the Secretary of the Interior. It does contemplate the appointment of guardians, but only in those cases where it is necessary.

**STATEMENT OF MR. J. GEORGE WRIGHT, SUPERINTENDENT OF
THE OSAGE INDIAN AGENCY**

Mr. WRIGHT. I am presenting a map showing the Osage country, which covers approximately 1,465,000 acres. It also shows the source of this large tribal revenue, which does not apply to any other reservation in the country. Congress, in allotting the lands in 1906, provided that the minerals underneath these lands should be reserved to the tribe as a whole. Therefore, every Indian who received his allotment of the surface of the land only has an interest in the minerals. Such allotment act was not a formal agreement with the Indians, as was the case in the five tribes where I had been for 20 years.

It was a purely arbitrary act of Congress, distributing the surface of the land among the Indians. The Indians prepared a rough draft of what they would like to have, and the department prepared another draft, but Congress passed the act which provided that those Indians who were living on July 1, 1907, should participate in the distribution of these lands and this property, and there were enrolled at that time 2,229 members. They were each allotted approximately 650 acres of land. Each Indian was permitted to select 160 acres and everybody selected 160; then they selected a second and a third in order to prevent a few from monopolizing the most desirable land.

The land in the Osage country, 75 per cent of it, is suitable principally for grazing. A considerable portion of it is rough prairie, rocky and stony, but along the borders of the Arkansas River and the valleys there is considerable good land. It was considered and has for years been the only large body of land where large cattlemen can go for grazing their stock, and prior to the allotment of 1906 it was a great grazing country for cattle from Texas. Cattlemen in Texas brought their cattle up there and grazed them on these large pastures. Under the supervision of the department, they shipped them up there in April, holding them there until August and September, and then go on to Kansas City. That is what they do now.

A great many of these Indians do not live on their lands. They live in towns, and when the lands were allotted cattlemen had representatives up there arrange with individual Indians allotted in these large pastures to lease their lands, and there are there now probably 100,000 head of cattle; two years ago there were there about 300,000 head, and these Indians with the approval of the department, where they are restricted, so lease their lands.

Now, the minerals underneath are sold under supervision of the department.

The CHAIRMAN. Are the minerals owned by the tribe?

Mr. WRIGHT. Yes, sir; by the tribe as a whole, and are leased under supervision and regulation by the department. The law provided that the leases shall be made by the council of Indians with the approval of the Secretary of the Interior and under his regulations, and were originally to belong to the tribe until 1931, and then to go to the individual surface owner unless Congress otherwise directed.

Now, prior to 1915 there was a big blanket lease in Osage County for oil and gas covering 680,000 acres. That lease expired in 1916. Along in 1914 and 1915 the operators under that lease went to Secretary Lane inquiring if the lease was going to be renewed to them when it expired. If it was going to expire, they did not want to do any more drilling. That blanket lease had been granted by Congress.

To go back just a little bit, in 1895 a lease was made to a man named Foster covering the whole Osage territory, but there was no development. It was about 1905 that Congress renewed it, covering 680,000 acres where the operators had made their developments. That blanket lease had been subleased by the parent company to the various sublessees in areas from 40 acres up to 300,000 acres, the parent company retaining the gas rights and leasing it for oil to sublessees. The rule was then and is now that the royalties should be fixed by the President of the United States.

The royalties of the old lease were one-tenth. Afterwards it was made one-eighth and \$100 per well per annum for each gas well. In 1915, when the operators were petitioning the department to ascertain what was to become of their lease, and after a great many hearings with oil men, Secretary Lane, upon the recommendation of the Osage council, gave each lessee his holdings up to 4,800 acres, and the balance was released to the tribe.

At that time the council then passed a resolution asking that Congress be asked by the department to extend the mineral period for 50 years beyond 1931, and the Indian committee of the House came down there in 1920, and as a result of their investigations there they finally passed this act of March 3, 1921, continuing mineral rights until 1946, and also provided that the department should lease all of the unleased lands for oil by 1931, or within 10 years from 1921, at the rate of not less than one-tenth of the unleased area per year, and under that act of Congress we are required now to lease these lands for oil at the rate of 100,000 acres a year, and they are leased at public auction. We lease it periodically, and that is where, by the increased production, these vast sums of money come from.

Now, the chairman of the House committee at that time directed me to ascertain and report to them what the Indians were doing with their money, and it developed that many restricted Indians were enormously in debt, and when they passed that act of 1921 they provided that we should only pay the restricted Indian \$1,000 a quarter, and we should hold the balance. There were 278 Indians had been paid in six years over \$10,000,000, and on March 3, 1921, they had spent that and in addition owed over \$1,300,000.

Now, the act restricting that payment to \$1,000 per quarter does not permit the department to pay any more money under any circumstances to any Indian than \$1,000 a quarter, or \$4,000 a year; but, as Mr. Woodward stated, where there is a guardian appointed, that guardian gets all of the money and spends it under the direction of the county courts, but not under our direction. We can go to the court and object to such expenditures as we see fit, but the courts under the State law allow the guardian to spend more than the Federal Government does. Consequently we can not restrict the investments or the expenditure of that money.

Senator KENDRICK. Do you mean to say by that that all the force and effect of your protest is just contingent upon the attitude of the court?

Mr. WRIGHT. Yes, sir.

Senator KENDRICK. He can heed your protest or he can disregard it altogether?

Mr. WRIGHT. Yes, sir. We can not stop it. We can appeal to the district court or to the State supreme court—we have made over

75 appeals—but the difficulty is in the fact that the guardian is acting in accordance with the State law, and the court sustains the guardian as against the Government, because the guardian is acting under the State law, and the Congress does not permit us to make investments in real estate. We can only use funds under this act of Congress in two different ways. The law specifically provides that the money that we hold back shall be used to pay the taxes of the Indians, and the balance should be put in banks or to buy Liberty bonds or municipal bonds. We can not use it for any other purpose.

Now, Judge Wilson inadvertently a number of times has, I think, unfairly referred to the attitude of the department in saying that the department by its strict methods won't pay out this money. The department is governed by the acts of Congress, and we can no more pay more than \$1,000 a quarter to the Indians than we can take money out of the Treasury. Therefore where is the arbitrariness of the department? The department must comply with the law and the superintendent must comply with his instructions or be removed; that is all.

Mr. Wilson also referred to some Indian who came up here, and that we would not give him the money to get up here. That Indian was getting \$1,000 quarterly, but did not have any money to come to Washington, so he had to go to the bank and borrow it, even though the agency was holding a large amount of money owing to him. Mr. Wilson went on to say that I permitted him to do so, and adds, "Now, that is illustrative of the stiffness and inflexibility of the department's methods."

Even though that Indian wanted to come to Washington, I could not draw a check against his account if he did have \$82,000,000 on hand, which Congress prohibited us from paying out.

The CHAIRMAN. I do not think Mr. Wilson wanted to reflect on you.

Mr. WRIGHT. All the way through the record it is "the department" and that the great difficulty represented throughout Oklahoma is "with the department." Every criticism is against "the department." Why, Mr. Chairman, I have been threatened time and again, and two years ago the people down in that community, because I would not pay \$1,300,000 debts of Indians that they submitted against restricted Indians, wrote to their jobbers in the East asking them to write to their Senators to present my name to the President for removal because I would not pay these debts in full; furthermore, some of those white people—a great many of them good friends of mine in a way, but they all want to get this money—caused to be circulated a petition among the Indians for my removal because I was "holding up their money."

"Because the department is holding up this money"—that is the way it reads in this hearing all the way through. The superintendent can not pay a dollar which Congress prohibits.

There is so much of this criticism against "the department." If there is anybody in Oklahoma or anywhere else that will come to this committee or anywhere else and say that any of the officials of the Osage Agency are not complying with the law, I would be very glad to meet them. They won't do that.

Senator FRAZIER. You were going to tell us something about this restricted money.

Mr. WRIGHT. When I went to the Osage Agency in 1915 they had no district farmers. The Indians were not getting much consideration, and there was an investigation just prior to that time by a joint committee of Congress. Senator Robinson was chairman and Commissioner Burke was on the committee, and the first thing I did was to divide the reservation into four districts, and appoint district farmers in each of such districts, and I wrote them this letter on March 2, 1915. I will only read part of it [reading]:

In order that you may thoroughly familiarize yourself with your district, ascertain the condition and value of lands, the number of Indians living on their allotments, and keep a check on the lessees, I desire that you hereafter spend each day of the week in the field, away from your office or home, except Saturday. You should notify all Indians and other people with whom you have dealings that you will hereafter spend Saturday only in your office or at your home, and they can arrange when desired to see you upon that day. I especially desire that you visit full bloods of the incompetent Indians who are living on their allotments and render them every assistance possible in their farming operations. If any improvements, including houses, barns, or fences, have been erected on such lands, under contract, you should ascertain whether same comes up to contract requirements. Where lands are being occupied by lessees under lease through this office, you are requested to keep in touch with such lessees, frequently visiting the premises, and see to it that the terms of the leases are being complied with, and make prompt report of any violation thereof. I also desire a report at the earliest possible date giving the names of all persons you may find in possession of lands who have informal agreements or other arrangements with Indians and whose leases have not been submitted to this office, or who have no lease whatever, and ascertain under what authority such persons are so occupying lands, procuring from them if possible a copy of any lease they may have, and ascertain how much rent is being paid per annum, to whom and when paid, and also what in your judgment the rents should be, secure all information possible in connection therewith, together with the description of lands such persons are occupying. I understand that some of the Indian children living in the country districts are not attending school regularly as required. You will inform Indian parents that their children of school age, whether enrolled or not, must attend some school, and if you find any child not attending regularly, you will ascertain the name, together with the name of the parent, and report same to this office. The law requires that such children must attend school, and you will impress that upon the parent's mind. If any child is sick, or for any reason is unable to attend school, a certificate should be obtained from a physician or other evidence submitted and forwarded to this office showing the child's inability to attend, otherwise, it will be necessary to have the child's or parent's annuity money withheld.

I desire that you keep a book showing your whereabouts and places you have visited each day and at the end of each month submit a brief report of work performed during said month. On your rounds you should make a note in your book of anything requiring the attention of this office and write this office for information and advice. I also especially desire that you carefully note at all times whether liquor is introduced or kept on the premises of any Indian leased lands, and to make a full investigation and prompt report of any and all instances brought to your notice.

I realize that it is going to require considerable work and travel for you to comply with these instructions, but, it is absolutely necessary that the directions herein given be faithfully and vigorously carried out, and if you are unable to comply with same, please promptly advise me giving reasons fully.

Hereafter all leases entered into with Indians in your district for grazing and agricultural purposes will be submitted to you for investigation and recommendation. I desire that all white persons, including tenants on land who have dealings with Indians, be accorded courteous and fair treatment, but I am required to see that they comply with the law and instructions of the commissioner. You, of course, understand that you are employed for the purpose of protecting and helping Indians, especially those who are considered incompetent and in need of assistance.

Now, we have at present only about 400 adult full-blood restricted Indians, and our four field men can attend to their wants. Such Indians do very little if any farming; they live in good houses, but

they won't work. During the calendar year 1920 they got \$8,000 apiece, and a man and wife got \$16,000. Why should they work? There is not a family that has not got white people working for them. About 60 families live on their farms and 120 in towns. Those 60 that live on their farms, when they send their children to high schools, come into town and go back to the farms when they feel like it; but they won't work.

Now, in view of the statements made that these guardians give the Indian all of this "personal touch" and that we can not do that work, I recently directed our farmers to write me a letter telling what they did and what the guardian did.

Here is a letter dated May 8, 1924, from one of our best district farmers. He has been a farmer down there for five years, but he has been recently transferred to the field oil division because he is a good man. [Reading:]

In answer to your inquiry relative to the amount of personal service rendered to individual Indians and similar services rendered by guardians of Indians in the Hominy district.

The day's work usually started about 7 a. m. with telephone calls from various Indians, desiring to know if they could see me at the office at 8 o'clock before I left for the country, or if I could call at their homes. These calls were usually answered in the affirmative, and business in general was as follows:

Leasing of lands; repairing of buildings; construction of residences or other buildings and fences; purchase of farm machinery, livestock, seed, and feed; repair of automobiles and purchase of new ones; sickness in various families; and many other matters.

These various matters were taken up by me in their regular order, or as appeared most urgent, and each day of the week, except Saturdays, was spent in the performance of such duties as above listed, and including any other written instructions from you.

Rarely a day passed, fit for travel, that I did not call at various Indian homes or allotments. I usually worked at the office each night until 9 or 9:30, and all of the affairs of the restricted Indians received my attention. All of each Saturday was spent in the office where many Indians called relative to their personal affairs.

Numerous Indians with guardians have called on me at various times for assistance, and I have frequently gone with them to their guardians and have asked that their business receive attention. Also, many complaints have been made to me by such Indians against their guardians and my assistance asked in helping to get the guardian discharged, so that their business could be handled through the agency. Also a very large per cent of these guardians keep coming to me for assistance and expect me to perform their services where possible, such as preparing leases on land, inspection of buildings and other property, and repair or purchase of cars, etc. I believe that there has been no day in the past three years when I have not had on my desk some guardianship business, there being three such cases to-day. One guardian has requested me to go 15 miles and inspect a house which he has had built for his ward, another has asked me to take charge of the construction of a residence for his ward, and the third is the payment of help for his ward.

It is my observation that these guardians are usually busy with their own affairs, and with very few exceptions that they render almost no personal service to their wards, many of them being unfamiliar with the characteristics of the Indian, and consequently incapable of rendering much service.

I have endeavored at all times to cooperate with these guardians as fully as possible in order that the Indians' rights may be maintained, but I can see no possible excuse for this go-between, the guardian, as the Indians' business can be handled with much more efficiency and dispatch without the formality of a legal guardian, except in a few extreme cases.

In regard to your general instructions to Government farmers, as received at different times, I desire to state that all of their provisions have been put into effect as fully as circumstances would permit, and that results obtained are reasonably satisfactory.

Here are letters from the other district farmers; practically the same in substance. I have here several letters written from guardians to our field men. Here is one from a guardian asking if he would find a contractor or a builder who would draw these plans and specifications for him. Here is another letter from a guardian to one of our field men, acknowledging receipt of a report that the farmer made to him that a barn had been built satisfactorily and inclosing a check with a request that the Government farmer deliver it. Here is another guardian who writes that he wants an appraisement made for the yearly rental on certain described land. Here is another, "I would like the assistance of your department in leasing for this year the following land of my ward." Here is another one from a guardian to one of our field men, inclosing a lease. It reads as follows:

I had a conversation with Mr. Hartzell last fall about this lease, and we agreed on the terms as specified, subject, however, to the approval of the superintendent and the county court. Later I received a letter from you stating that you thought the rental in view of the improvements should be a little larger than that specified in the lease.

I am therefore advising Mr. Hartzell to see you, and you and he may either agree on the terms of the present lease or draw a new lease that meets with your approval, and return same to the undersigned for the signature of the guardian, after which the same will be submitted to the superintendent for his approval.

Here is another letter from one of our men relating to requests made by legal guardians. He says, in part, as follows [reading]:

I desire to say that such requests are not frequently in writing, but are verbal, and frequently an intended lessee comes with a message from the guardian, asking if I can appraise the land and insert the amount in the lease.

The last appraisal of this nature made by me was on the evening of Thursday, April 17.

One day last week another guardian called on me and asked me where certain land was located, stating that he was unable to find it and that he had never seen it.

This land was part of the allotment to a certain Indian for whom the same man had been guardian for two years.

Now, each one of our field men sends to me a weekly report showing his whereabouts each day of the week. For example, here is one [indicating]. On one day a pipe line was inspected, on another an investigation was made on a certificate of competency for a certain Indian, on still another investigation was made of a trespass complaint, on another he appraised 240 acres of land, and so on. They must send in weekly reports covering the services rendered individual Indians each day of the week.

I found that before I went there it was the practice, with respect to agricultural and grazing, for representatives of cattlemen to take a notary public and go out among the Indians and have them sign the leases in blank. They would have the notary public certify as to the signature, and then fill the lease in afterwards. The Indians were continually complaining that they thought they were signing to be paid certain amounts but subsequently were paid less. Such leases can not now be made except with approval of our field men, and the field men explain those things to the Indians. The farmers must show a description of the land of each lease and state at the number of acres in cultivation, the number of acres of timberland, what is waste, what the improvements are, whether the rental is adequate, and whether they recommend approval of the lease, also state if they have inspected the land. That is done with every lease.

Senator KENDRICK. Did I understand you to say that you leased the majority of these Indian lands to cattlemen during the summer?

Mr. WRIGHT. Yes, sir.

Senator KENDRICK. Do you lease it on a per acre basis?

Mr. WRIGHT. Yes, sir; generally from 35 cents to, in some cases, \$1 per acre. Thirty-five cents as a rule is the minimum though in a few instances owing to the character of the land, 25 cents per acre.

Senator KENDRICK. Per acre?

Mr. WRIGHT. Yes, sir.

Now, I am simply taking the record in these cases, and I have recently had our office send to me the names of guardians who have charge of Indian lands, and had them give the name of the Indian, the name of the guardian, how much of that land is leased and how much is not leased. Those leases made by the guardians come to our office for approval and we have our field men investigate them.

This list shows 145 guardians. They are guardians for 305 wards. They had leased 59,000 acres, and 96,000 acres does not appear to be leased at all.

The Indians are not using that land, because most of the Indians live in town. If that 96,000 acres of land or any part of it has been leased, it has not been submitted to us.

Senator CAMERON. Does your list also show the character of the Indian for whom the person is guardian, whether or not he is a full blood, for example?

Mr. WRIGHT. They are all restricted. We are not asking for any legislation at all for the unrestricted Indians.

The committee of the House, upon investigation, upon the testimony of myself and others, developed that some of these full-blood Indians who in years past got certificates of competency had squandered large amounts. I came across an Indian a short time ago who is a member of the council. He and his wife, during the last six years, have received \$62 per day and he can not tell anything about his affairs. I paid him \$6,000 or \$8,000 in one payment last June, and inside of a week he came in and wanted me to send his next check down to a bank as he had to borrow \$5,000.

Now, this bill provides that where the Secretary finds upon investigation and after hearings that any full blood Indians who have been issued certificates of competency, have squandered their money, he may revoke that certificate and place them back in the restricted class.

Our office at Pawhuska is a very busy place. Our receipts in our office last year from different sources were over \$60,000,000. Our receipts for the month of March, this year, were over \$10,000,000. It might be said that we can not give our personal attention very much, to the restricted individual Indian, but we do, and I challenge any man to say that the Indian as a rule does not come to us ten times for every one time he goes to the guardian. Our office is filled, day after day, with Indians asking me to have their guardians discharged. I have guardians called up ten times a day on the average, and tell them that the Indians are complaining about this, that and the other thing. The Indians come into our office day after day, until they drive one almost crazy. Our office hours, these gentlemen say, is from 9 to 3 o'clock. Our office is open from 8 until 4.15. We have 40

clerks in our office, and we have 8 or 10 clerks who do not do anything else but attend to the individual affairs of the Indians. The doorway to my office is never closed, and there is rarely a time from 9 to 4.15 that they are not from 15 to 20 Indian automobiles in front of the office. The Indians are coming to me all day long, together with the general public, the oil men, their lessees and others. Our clerks have instructions to give each Indian all the time that he wants and to bring him to me if the Indian does not understand any matter.

Naturally these Indians want to get all of their money. They got it before 1921 and they can not see why it should not be given to them now. Time after time those Indians come in and we go over in detail with them showing them just how their accounts stand. They will frequently get the amount to their credit on a slip of paper, showing how much they have got and in a very few days there is frequently an application made for a guardian. If a guardian is appointed, we must pay all that money to the guardian and it is expended under the provisions of the county court. We can only go there and object. Judge Wilson said a short time ago that we have not had a man there all the time, sitting day after day in the court, and, therefore, what derections the court has done, we are responsible for because we have not had a man there. That does not show a very high respect for the county judge. He is passing on these things, and surely the superintendent should not be held responsible for what he can not control.

While these acts of Congress provide that we shall pay a guardian under supervision of the superintendent, they say the superintendent is arbitrary, that he is set in his notions.

For 40 years I have been handling that sort of business, and I am pretty set in my notions to do what I am told to do by the department, but, with oil men or anyone else, if I can not comply with their requests I have suggested to them that they write me a letter indicating why they consider their request should be granted and I would be glad to send it to the department for instructions.

We have paid out in our office in the last six years to Indians, or placed it to their accounts, over \$115,000,000. We have sold oil leases in 160-acre tracts to the extent of about 500,000 acres and have realized over \$90,000,000 in bonuses alone, and we get one-sixth royalty, except if wells on any one quarter section average 100 barrels daily for 30 consecutive days, we get one-fifth royalty. We get three cents a thousand for our gas. Our royalties run around a million a month.

Now, if Congress should deem wise to provide that the money should be paid to guardians of restricted Indians under certain circumstances, and the department is authorized to pay the Indian direct and invest their moneys in the same way as the guardians are permitted to do it, I do not believe the department would offer any objections. But what the Indians object to, and what the department is objecting to, is that we can only pay the Indian \$1,000 a quarter, but the same Indian may get a guardian and get all of the money, which we can not control.

The idea of the House committee in providing this \$1,000 quarterly was to conserve these funds for the Indian after this oil shall have been all extracted. In the bill that was presented originally by the Indians and by the department to the committee it was pro-

vided that in addition to this \$1,000 quarterly the Secretary could pay such additional amounts for specific purposes as deemed advisable when authorized by the commissioner and to be paid under his direction and supervision.

That would enable him to pay a guardian where he thought it advisable, or to pay it direct, and at the same time permit these Indians who are getting old or are becoming feeble to have some of this additional money.

In the case Mr. Wilson recited that an Indian had to borrow money to come up here—that Indian was a full-blood and his wife had three children originally, and they drew five shares because they inherited the estates of the three children. During the calendar year 1919 each share was worth \$5,000. We paid them \$25,000. During the calendar year 1920 oil went up and we paid them \$50,000. Two months later, or on March 3, 1921, after they got it, they were broke and owed over \$12,000, and that is the history of a great many others.

I have a list here of every Indian, 278 of them, showing the amount of money that had been paid them in six years and what their debts were at the end of such period.

Senator KENDRICK. The white people who deal with them must have an unlimited excursion.

Mr. WRIGHT. I had one Indian's accounts presented to me, an Indian and his wife and one child 10 years old, and the running account at one store was \$52,000.

Senator FRAZIER. In how long a time?

Mr. WRIGHT. Nine months, it was provided in the act of March 3, 1921, that the just debts should be paid when approved by the superintendent, and I got a man from the Federal Trade Commission to come over and help me, and I worked for months and months.

The CHAIRMAN. What did you finally do with it?

Mr. WRIGHT. In all of those debts filed, aggregating over \$300,000 there was probably \$400,000 in notes. In many, many instances the man that had given that note could not tell how much money he had given the Indian, and he could not tell us anything about it. The Indian said he got the money. We compromised, with the approval of the department—every such case went to the department—but in one case I paid an Indian's notes of \$8,000 or \$9,000 and took off a certain amount. He had some notes that I would not pay at all. I took his receipt upon his own proposition as a receipt in full settlement, taking off 5 per cent of his notes and getting his receipt in full. After I paid that account in full he had a guardian appointed for that same Indian. Then he took a note for some \$3,000, which I deducted in the settlement, from the Indian, presented it to the guardian, had the court approve that, and paid him, notwithstanding our protest, after we had taken his receipt in full. And after full presentation to the court of the fact that I had settled those debts the court took the position that under the State law there was a note which the Indian acknowledged and it was legal to pay it.

The CHAIRMAN. Was that one of those claims authorized to be settled under the act of 1921?

Mr. WRIGHT. Yes, sir. Since that time we have been paying \$1,000 quarterly under supervision. If the Indian is not in debt I

let him have the \$1,000. If he has any debts or if he had debts accruing in 1921, then I paid \$300 the first month, \$300 the second month, and \$400 the third month, which makes the \$1,000, because the law says I can pay it under supervision. If I held up the money for the guardians I do not think they would consider I had the authority to do so. The law says we shall pay them \$1,000 quarterly, but we cannot prevent those same Indians going into debt again, so the department has recommended that no debts of the restricted Indians shall have any validity until approved by the Secretary or his representative in the field.

There is no law to prevent a man loaning an Indian \$100 or selling him \$100 worth of merchandise if he wants to, and the only way it can be and should be controlled is that no Indian under the control of the Government should be allowed to contract debts without approval, and such debts should have no validity unless approved by the Secretary or his representative, just the same as the ward of a guardian can not contract a valid debt unless approved by the guardian.

STATEMENT OF MR. J. M. HUMPHRIES, PROBATE ATTORNEY

Mr. HUMPHRIES. I want only to call attention to the amount of money invested in real estate, the cash on hand, certificates of deposit and Liberty bonds, that is, on the basis of five years. I could not get them all. This shows that 11.1 per cent is invested in real estate; that the average amount of money received from the agency by the guardian is \$45,692.53; that the entire amount of Liberty bonds, cash and certificates of deposit, including real estate, for the 50 Indians is \$777,075.39, making an average estate in the hands of each individual Indian of \$15,541.50, showing a depreciation in the hands of those 50 guardians individually of \$30,151.40.

In other words, about 35 per cent of the amount received from the agency is on hand. The 65 per cent has been consumed in expenses and court charges.

I desire to file these cases, then I am through.

Mr. HUMPHREY. I understood they closed their case in chief and this seems to be new matter that they are bringing up. I have no objection to their putting anything in the record they want to, but I want the opportunity to answer it.

Mr. WOODWARD. If there is to be any delay we will withdraw what Judge Humphries offers to put in.

Mr. HUMPHRIES. Well, we will withdraw it.

The CHAIRMAN. Whatever is your pleasure about it. If you put it in they would have a right to inspect it to see if they want to answer it.

Mr. HUMPHRIES. Then I will withdraw it, but I do want to answer one thing that Judge Wilson brought out and then I am through.

In the matter of the guardian of Susan L. Hyatt I reported the following funds collected as shown by orders of the court, January, 1923: Guardian fees, \$1,000; attorney fees, \$500.

It is my recollection that Mr. Stevens swore that that was approved by Judge Humphries and the Osage Agency.

In January, 1923, I was county judge of Atoka County and was not in Osage County at all. I did not go to Osage County until May, 1923.

In the matter of the estate of Susan L. Hyatt, I desire to say that in memorandum No. 10 the testimony in the case showed that a large proportion of the amount of money included in a promisory note was indebtedness incurred by the minor during his minority; that either on the day before or on the day of his majority the note was taken, and if that account has ever been approved, I do not know it at this time.

I want to say that the notes and the records that I have made before this committee have been carefully considered by me and unless there has been a mistake in printing I think you will find it correct according to the records. That is all I have to say.

The CHAIRMAN. I am going to provide soon for an executive session of the committee to decide what next step to take in this matter. I will perhaps call one sometime this week, if I can do it.

(Whereupon at 5:30 o'clock p. m. the committee adjourned subject to the call of the chairman.)

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15
LANDS OF THE INDIANS RESIDING UPON
THE UMATILLA RESERVATION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

S. 720

A BILL TO AMEND AN ACT OF MARCH 3, 1885, ENTITLED "AN
ACT PROVIDING FOR ALLOTMENT OF LANDS IN SEVERALTY
TO THE INDIANS RESIDING UPON THE UMATILLA RESER-
VATION, IN THE STATE OF OREGON, AND GRANTING
PATENTS THEREFOR, AND FOR OTHER PURPOSES"

FEBRUARY 4, 1926

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Printed for the use of the Committee on Indian Affairs



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1926

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LANDS OF THE INDIANS RESIDING UPON THE UMATILLA RESERVATION

THURSDAY, FEBRUARY 4, 1926

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to call of the chairman, Senator Charles L. McNary, presiding.

Present: Senators McNary, Cameron, La Follette, Ashurst, Kendrick, Wheeler, and Bratton.

Senator McNARY (presiding). This is a hearing on Senate bill 720 introduced by me on December 8, 1925.

(The bill is as follows:)

[S. 720, Sixty-ninth Congress, first session]

A BILL To amend an act of March 3, 1885, entitled "An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and granting patents therefor, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the act of March 3, 1885 (Twenty-third Statutes at Large, page 142), be, and the same hereby is, amended so as to authorize the Secretary of the Interior to withhold from sale or disposition, for use as tribal grazing grounds, all unentered and undisposed of lands in township 2 south, ranges 34 and 35 east of the Willamette meridian, Oregon, formerly a part of the Umatilla Reservation.

Senator McNARY (presiding). Mr. Meritt.

STATEMENT OF E. B. MERITT, ASSISTANT INDIAN COMMISSIONER, WASHINGTON, D. C.

Senator McNARY. You are familiar with the provisions of this bill, and I would like to have you briefly relate to the committee the attitude of the department.

Mr. MERITT. The department is in favor of S. 720. The act of March 3, 1885, opened up the Umatilla Reservation and permitted settlers to go into the reservation that was not allotted to the Umatilla Indians. These Indians now believe that they should be permitted to retain that land for grazing purposes, and they have submitted a very strong appeal to the department, and we believe that inasmuch as that land belongs to those Indians and that they now need it for grazing purposes that they should be permitted to retain it. We have suggested an amendment so as to protect the white people who have gone in there and taken up this land under this act of Congress in good faith. We believe that is only right, and with that amendment we suggest that the bill be enacted.

Senator McNARY. How many white settlers are affected by your amendment?

Mr. MERITT. We have not the exact number, but there is not a very large number.

Senator McNARY. With that amendment you are in favor of the proposed legislation?

Mr. MERITT. Yes, sir.

Senator McNARY. Thank you, Mr. Meritt.

Mr. MERITT. We have submitted a report which we would like to have placed in the record.

Senator McNARY. That may be done.

(The report from the Secretary of the Interior to the chairman of the Committee on Indian Affairs, together with Report No. 1210 to accompany S. 994 and S. 994, are here printed in the record in full, as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, January 6, 1926.

Hon. J. W. HARRELD,
*Chairman Committee on Indian Affairs,
United States Senate.*

MY DEAR SENATOR HARRELD: Further reference is made to your communication of December 14, 1925, transmitting for report copy of Senate 720, a bill to amend the act of March 3, 1885, entitled "An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and granting patents thereof, and for other purposes."

In reporting on this bill your attention is invited to a former report of this department dated December 10, 1923, to the then chairman of the Senate Committee on Indian Affairs, which will be found printed in full in the inclosed House Report No. 1210, Sixty-eighth Congress, second session, accompanying S. 994, a copy of which is also inclosed.

It will be observed that S. 994, which failed of enactment in the Sixty-eighth Congress, contains a proviso as follows:

"That any settler on these lands prior to April 21, 1921, shall be permitted to acquire title to the lands covered by this settlement, not exceeding one hundred and sixty acres of nontimbered lands and forty acres of timbered lands, at not less than the appraised value thereof by making entry of the lands at the proper district land office within six months after the date of the passage of this act and by complying with the provisions of law governing other entries of Umatilla lands."

It will be observed that the proviso just quoted is absent from S. 720 now under consideration, the two bills being identical in other respects. This department is in favor of legislation to reserve the lands permanently for the use of the Umatilla Indians for grazing purposes, but it is believed that suitable provision should be made for the relief of bona fide settlers within this area who established settlement on lands occupied by them prior to April 21, 1921. For this reason and as set out in our previous reports on similar legislation, it is recommended, that S. 720 be amended by adding a proviso similar to that above quoted.

Very truly yours,

HUBERT WORK.

[House Report No. 1210, Sixty-eighth Congress, second session]

The Committee on Indian Affairs, to whom was referred the bill (S. 994) to amend the act of March 3, 1885, entitled "An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and granting patents therefor, and for other purposes," having considered the same, report thereon with a recommendation that it do pass without amendment.

This legislation is recommended by the Secretary of the Interior, and the reasons why this legislation is desired are fully set forth in the attached letter.

DEPARTMENT OF THE INTERIOR,
Washington, December 10, 1923.

Hon. SELDEN P. SPENCER,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR SENATOR SPENCER: I have the honor to submit herewith the draft of a bill to amend the act of March 3, 1885 (23 Stat. 340-342), entitled "An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation in the State of Oregon, and granting patents thereof, and for other purposes."

The purpose of the bill is to withhold from sale or disposition about 7,000 acres of land and to make the same available for the use of the Umatilla Indians for grazing purposes. These lands were formerly a part of the Umatilla Reservation, but were excluded therefrom pursuant to the act of March 3, 1885, supra, and now subject to disposition under section 2 of that act. The lands were surveyed in 1917, and in 1920 they were classified and appraised with a view to disposition, which classifications and appraisements were approved by this department August 23, 1920.

The Umatilla Indians, through some of their headmen and their superintendent, have urged that these lands be withdrawn from sale and made available for the use of the Indians. The Commissioner of the General Land Office was requested in April, 1921, to withhold action as to the disposition or sale in the lands pending further action by Congress, and the matter was the subject of Senate bill 926, Sixty-seventh Congress, first session, on which a favorable report was submitted by this department, with certain modifications.

In view of this situation and the reported need of the Umatilla Indians for additional lands, it is recommended that the inclosed draft, or legislation similar thereto, be introduced at the present session of Congress, and that it receive the favorable consideration of your committee.

Very truly yours,

HUBERT WORK, *Secretary.*

[S. 994, Sixty-eighth Congress, first session]

A BILL To amend the act of March 3, 1885, entitled "An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and granting patents thereof, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the act of March 3, 1885 (Twenty-third Statutes at Large, page 142), be, and the same hereby is, amended so as to authorize the Secretary of the Interior to withhold from sale or disposition, for use as tribal grazing grounds, all unentered and indisposed of lands in township 2 south, ranges 34 and 35 east of the Willamette meridian, Oregon, formerly a part of the Umatilla Reservation: *Provided,* That any settler on these lands prior to April 21, 1921, shall be permitted to acquire title to the lands covered by his settlement, not exceeding one hundred and sixty acres of nontimbered lands and forty acres of timbered lands, at not less than the appraised value thereof by making entry of the lands at the proper district land office within six months from the date of the passage of this act and by complying with the provisions of law governing other entries of Umatilla lands.

Senator McNARY. Captain Sumpkin [addressing the interpreter] will you give the reporter your name?

Mr. MINTHORN (the interpreter). Aaron Minthorn.

Senator McNARY. You live in the Umatilla Reservation?

Mr. MINTHORN. Yes, sir.

Senator McNARY. And you are the constituted and accredited interpreter of these two witnesses to follow?

Mr. MINTHORN. Yes, sir.

Senator McNARY. Authorized by what tribe?

Mr. MINTHORN. The Umatilla, Cayuse, and the Walla Walla Tribes, of the Umatilla Indian Reservation.

Senator McNARY. We are considering, Mr. Minthorn, Senate bill 720, with which you are more or less conversant.

Mr. MINTHORN. I am.

Senator McNARY. Now, the first witness is Captain Sumpkin, I am told. Where does he reside?

Mr. MINTHORN. He lives in the Umatilla Reservation, about 7 miles east of Pendleton.

Senator McNARY. Is he a Umatilla Indian?

Mr. MINTHORN. Yes, sir.

Senator McNARY. Very well. Ask the captain what he thinks about this bill under consideration.

Senator LA FOLLETTE. Has he been authorized by the tribe?

Senator McNARY. Yes; he said that a moment ago. You are authorized by the tribe to act as an interpreter, is that not true, Mr. Minthorn?

Mr. MINTHORN. Yes.

Senator LA FOLLETTE. Is the captain?

Senator McNARY. You might state what relation the captain bears to the tribe, and if he is authorized to speak for them.

Mr. MINTHORN. At the last council held at the Umatilla agency Captain Sumpkin was named as one of the official delegates in a petition signed by Indians of the three tribes representing the Umatilla Indian Reservation.

Senator McNARY. And whom does the other witness represent?

Mr. MINTHORN. The Umatillas.

Senator McNARY. Very well. Now let me ask you to keep this in mind. We have only 20 minutes, because the Senate meets at 11 this morning, and we want to divide the time between the two gentlemen. You may ask Captain Sumpkin what he thinks about this bill.

STATEMENT OF CAPTAIN SUMPKIN, OF THE UMATILLA INDIAN RESERVATION

Captain SUMPKIN (through Interpreter Minthorn). The bill as originally introduced, as I understand by Senator McNary, in December, 1925, was favorably received by the tribe, and we came here to see that if the bill would be recommended as it read at that time, and without no amendments which the Indian office has recommended.

Senator McNARY. Then ask the captain why does he object to the proposed amendment by the Commissioner of Indian Affairs.

Captain SUMPKIN (through Interpreter Minthorn). It is the wish of the tribe for whom I am expressing their opinion, as far as I know, that the title has never been clearly explained to us which the settlers have set forth in their claims to the amendment in this bill that they wish to have. I never knew of any records that they had to justify their claims. That is all.

Senator McNARY. Very well, that is about the captain's position; in other words he is favorable to the bill as it is introduced?

Mr. MINTHORN. Yes.

Senator McNARY. And opposes the amendment because he believes that it gives certain white entrymen rights to which they are not entitled?

Mr. MINTHORN. Yes.

Senator McNARY. That is his position, that is his attitude?

Mr. MINTHORN. Yes.

Senator McNARY. I understand it. Now, the next witness.

Senator ASHURST. Ask the captain how many white settlers are there involved here.

Captain SUMPKIN (through Interpreter Minthorn). When settlers first came into this Johnson Creek land they were five in number, and now the last report that I know of is that there are only three left.

Senator ASHURST. That is all.

Senator McNARY. Very well. Call the next man.

STATEMENT OF AMOS POND, OF THE UMATILLA INDIAN RESERVATION

Senator McNARY. Tell the committee the name of this gentleman, where is he from, his address, and all about him.

Mr. MINTHORN. This is Amos Pond, resident of the Umatilla Indian Reservation, representing the Umatilla Indians.

Senator McNARY. Jointly with Captain Sumpkin?

Mr. MINTHORN. Yes, sir.

Senator LA FOLLETTE. Was he authorized at the same meeting?

Mr. MINTHORN. He is the other authorized delegate to represent the Indians of that reservation. And he represents the Umatilla Indians.

Senator McNARY. Well, now, have him state briefly to you if he is in favor of this bill. If not, what objection he has to it.

Mr. POND (through Interpreter Minthorn). I favor the bill that has been read to me which was introduced by Senator McNARY. Objections have been presented by the Indians many times before to the commissioner because the settlers were in the center of the Johnson Creek land, which is the most choice part of that territory.

Senator McNARY. How many acres in Johnson Creek are involved in this transaction?

Mr. MERITT. About 7,000 acres, Mr. Chairman.

Mr. POND (through Interpreter Minthorn). About 7,000 acres.

Senator McNARY. And there are only three settlers I believe you claim now?

Mr. POND (through Interpreter Minthorn). There are only two left, the latest report, and one is reported now as dead. There were three.

Senator McNARY. What is the extent of the holdings of these white settlers?

Senator WHEELER. How much land do they have?

Senator McNARY. How much land; how many acres?

Mr. POND (through Interpreter Minthorn). I do not know the exact number of acres.

Mr. MERITT. About 160 acres each.

Senator WHEELER. About 160 acres each? Ask him.

Mr. POND (through Interpreter Minthorn). I think there is about 160.

Senator McNARY. A hundred and sixty acres to each settler?

Mr. POND (through Interpreter Minthorn). Yes.

Senator McNARY. Very well; now let him state what further he desires regarding this bill.

Mr. POND (through Interpreter Minthorn). He states that the title of the settlers has never been reported to the tribe in this Johnson Creek land, and that is the reason why the Indians have always been in doubt as to whether they had a right to establish these homesteads in this Johnson Creek land. And if the title would have passed to them they would have probably filed at the land office such claims and which would be recorded. Then this provision would never have been objected to which is recommended by the department or the Indian Office to this bill.

Senator McNARY. Has he anything further to say?

Mr. MINTHORN. That is all.

Senator McNARY. All right. That concludes the hearing.

(Thereupon, at 10.45 o'clock a. m., Thursday, February 4, 1926 the hearing was concluded.)

70-5
15
RED RIVER, OKLA., OIL ROYALTIES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

S. J. Res. 63

A JOINT RESOLUTION AUTHORIZING THE SECRETARY
OF THE INTERIOR TO ESTABLISH A TRUST FUND
FOR THE KIOWA, COMANCHE, AND APACHE
INDIANS IN OKLAHOMA, AND MAKING
PROVISION FOR THE SAME

—————
MARCH 3, 1926
—————

Printed for the use of the Committee on Indian Affairs



WASHINGTON
GOVERNMENT PRINTING OFFICE

1926

tor said Kiowa, Comanche, and Apache Tribes entered into on October 21, 1867, and which has since been adjudged to be the property of the United States by the Supreme Court of the United States as aforesaid.

SEC. 2. That the Secretary of the Interior is authorized to administer and disburse the trust fund hereby created and appropriated and to prescribe for that purpose the necessary rules and regulations which, so far as consistent with the purpose of this act, shall be subject to the requirements of existing law.

The CHAIRMAN. I have asked Senator Gore, who is attorney for the Indians, to come up this morning, and if you care to we will have him make a statement of the facts in the matter as a preliminary statement.

Senator BRATTON. I think, Mr. Chairman, we should hear Senator Gore.

The CHAIRMAN. Senator Gore.

**STATEMENT OF HON. THOMAS P. GORE, ATTORNEY AT LAW,
WASHINGTON, D. C.**

Mr. GORE. Mr. Chairman and gentlemen of the committee, as suggested by the chairman, Senator Harreld reintroduced this resolution yesterday which was introduced early in the session and was Senate Joint Resolution 5, and as reintroduced yesterday is Senate Joint Resolution 63.

The main point in the revised resolution, as introduced yesterday, was to conform it in principles and detail largely to the bill recently introduced by Senator Bratton, of New Mexico. Senator Bratton's bill relates, as you know, to Executive Order Indian lands, and provides that 37½ per cent of royalties accruing from such lands shall go to the State in which the development shall take place in lieu of all other taxes.

Now, as I understand, gentlemen—and I was talking to the Assistant Commissioner this morning and to Commissioner Burke some time since—that bill is the outcome of considerable discussion and is practically an agreed proposition covering that phase of the problem. Now, the resolution as reintroduced by Senator Harreld yesterday conforms the principles of this bill to the principles of that bill and also, I may say, to the details of that measure, providing that 37½ per cent of such funds shall go to the State. The difference in this bill and the Bratton bill—if the Senator will pardon that term—is that this bill refers to these local lands and the Bratton bill being general in its nature.

Now, the moral claim of the Indians to these lands relates to this fact: In 1865 a treaty was entered into between the Kiowa, Comanche, and Apache Tribes of Indians in Oklahoma, which gave them a very large reservation which embraced Red River to the Texas line. Unfortunately the treaty included a great deal of land that did not belong to the United States. I will not go into that, but it is something I have never been able to understand, but it included the Panhandle of Texas, to the northeast corner of New Mexico. That mistake was discovered in 1867, and a substitute treaty was prepared in lieu of the treaty of 1865. The treaty of 1865 being between the United States and the Kiowa and Comanche Indians, but it was accepted by the Apaches, so it is virtually a treaty with the three tribes. And it provides, among other things, that the

southern boundary should be along the median line of Red River. The first treaty, the treaty of 1865, provided that it went to the Texas line. It was nebulous at that time as to what the Texas line was. It was the understanding of the Indians in the council of 1867 that the treaty drawn at that time extended their territory to the Texas line.

Now, the Supreme Court of the United States, in the case of Oklahoma against Texas, has decided that the line between Oklahoma and Texas is the south line of Red River, instead of the median line; Texas insisting that it was the median line and the United States and the State of Oklahoma insisting that it was the south bank of the river; and the Supreme Court confirmed the contention of the United States and Oklahoma, and held it to be the south line of the river. So, so far as jurisdiction is concerned, the jurisdiction of Oklahoma goes to the south bank, but the ownership is in the United States.

The CHAIRMAN. That is undisputed?

Mr. GORE. Yes; that is undisputed; that is, as to the jurisdiction. But the Supreme Court held that the title to the Red River was vested in the United States.

Now, it is the contention of the Indians that as this land was embraced in the treaty of 1865 and they thought in 1867 that their land went to the south bank of the river, it is our contention that they have a moral and equitable right to this land and to the incomes and revenues issuing from it. And I feel that I am at liberty to say that the Commissioner of Indian Affairs holds the same view.

This bill was introduced in the last Congress and had a satisfactory report from the committee upon that point.

Now, this land, under the decision of the Supreme Court, the land in the south half of the Red River was not adjudged to be public land and was not adjudged to be public domain, and, as you gentlemen from the public lands States know, the terms "public land" and "public domain" have a technical legal meaning, to determine whether they come within the State jurisdiction or the general leasing and mining laws. So it does not come within the purview of the leasing act. And the department held that it was not embraced in the leasing act, and, as you gentlemen know, the first section of that act seemed to put all of the public land in the leasing act, except such land as was taken out expressly. The Supreme Court held that it was not subject to disposition under any laws of the United States, and the department has held that it does not come under the leasing act, so it can not be disposed of under the leasing act.

And I might add that the last Congress provided that these moneys should be held in the hands of the Secretary of the Interior until disposed of by Congress.

Now, not coming under the leasing act it is not disposed of under that act, and certainly not in view of the action of Congress at the last session. And the department and the Commissioner of Indian Affairs especially feels that it equitably and morally belongs to these Indians.

I might add this, that the Kiowa, Comanche, and Apache funds are practically exhausted. The department has been using something like \$50,000 a year to defray the expenses of the agency, and,

within a year or two years it will be necessary for Congress to make appropriations to defray their expenses.

Now, since they seem to have a moral and equitable claim on these funds, it seemed to be the wise thing to introduce this resolution, and also that the self-respect of the Indians required that rather than to supply funds out of the General Treasury, it would be better to concede their right to these funds, where they have such a clear-cut right.

At the last session of Congress, extensive hearings were held, and they will be available to you gentlemen, the hearings having been held under H. R. 178, in the House. Gov. Alf Taylor, of Tennessee, who was for many years a Member of the House, testified last winter in the hearings before the House committee. He was Assistant Secretary of the council held at Medicine Lodge in 1867. His father was then Commissioner of Indian Affairs. I will not take your time to detail his testimony, but he is very strongly in favor of this measure and thinks the Indians have an undoubted right to these funds.

Maj. Gen. Hugh L. Scott, who was at one time Chief of Staff of the Army, and who was located at Fort Sill, is likewise very strongly of the opinion that the Indians should have these funds. He used this expression, I remember, "If I were sitting at this table in your place I would vote to give this money to these Indians."

Now, an Indian who was present at the council in 1867 testified, and I want one sentence read from his statement to show the point of view of the Indians; and you gentlemen all remember in the Cherokee case, the Supreme Court holds that in the interpretation of an Indian treaty you must not adhere to the strict language of the treaty, but must put yourself in the place and view the treaty and the language as it was viewed by the Indians themselves when that can be done without violence to the treaty. Just one sentence, which is not only convincing, but in a sense touching, which is found on page 98 of the hearings last spring. Tane-quoot, a Kiowa, was testifying. [Reading:]

Q. What were the boundaries of this new reservation?—A. The boundary, as it was announced, given to the new reservation as set aside for them, was sewed up with the Texas country. Where the stitches were, there the line was to be.

Now, that, gentlemen, reflects the view and the conviction of the Indians. This old Indian was there. He is now away above the eighties.

Now, as reflecting the spirit of the Indians, I want to take but a few minutes of your time to read a speech made by an Indian, a Comanche, to this council, which, as I view it, might rank with the best speeches of Patrick Henry or any other orator of this country at any time. It was a speech made by Ten Bears at this council when this treaty of 1867 was entered into. I think as members of this committee you will feel a special interest, as well as a general interest in hearing this read. It is on page 76 of the same hearings:

My heart is filled with joy when I see you here, as the brooks fill with water when the snow melts in the spring; and I feel glad, as the ponies do when the fresh grass starts in the beginning of the year. I heard of your coming when I was many sleeps away, and I made but few camps when

I met you. I know that you had come to do good to me and to my people. I looked for benefits which would last forever, and so my face shines with joy as I look upon you. My people have never first drawn a bow or fired a gun against the whites. There has been trouble on the line between us, and my young men have danced the war dance. But it was not begun by us. It was you to send the first soldier and we who sent out the second. Two years ago I came upon this road, following the buffalo, that my wives and children might have their cheeks plump and their bodies warm. But the soldiers fired on us, and since that time there has been a noise like that of a thunderstorm, and we have not known which way to go. So it was upon the Canadian.

Nor have we been made to cry once alone. The blue-dressed soldiers and the Utes came from out of the night when it was dark and still, and for camp fires they lit our lodges. Instead of hunting game they killed my braves, and the warriors of the tribe cut short their hair for the dead. So it was in Texas. They made sorrow come in our camps, and we went out like the buffalo bulls when the cows are attacked. When we found them we killed them, and their scalps hang in our lodges. The Comanches are not weak and blind like the pups of a dog when seven sleeps old; they are strong and farsighted like grown horses. We took their road and we went on it. The white women cried, and our women laughed.

But there are things which you have said to me which I do not like. They were not sweet like sugar, but bitter like gourds. You said that you wanted to put us upon a reservation, to build our houses and make us medicine lodges. I do not want them. I was born upon the prairie, where the wind blew free and there was nothing to break the light of the sun. I was born where there were no inclosures and where everything drew a free breath. I want to die there and not within walls. I know every stream and every wood between the Rio Grande and the Arkansas; I have hunted and lived over that country. I lived like my fathers before me, and, like them, I lived happily.

When I was at Washington the Great Father told me that all the Comanches' land was ours, and that no one should hinder us in living upon it. So why do you ask us to leave the rivers and the sun and the wind and live in houses? Do not ask us to give up the buffalo for the sheep. The young men have beard talk of this, and it has made them sad and angry. Do not speak of it more. I love to carry out the talk I get from the Great Father. When I get goods and presents I and my people feel glad, since it shows that he holds us in the eye.

If the Texans had kept out of my country there might have been peace. But that which you now say we must live on is too small. The Texans have taken away the places where the grass grew the thickest and the timber was the best. Had we kept that, we might have done the things you ask. But it is too late. The white man has the country which we loved, and we only wish to wander on the prairie until we die. Any good thing you say to me shall not be forgotten. I shall carry it as near to my heart as my children, and it shall be as often on my tongue as the name of the Great Father. I want no blood upon my land to stain the grass. I want it all clear and pure, and I wish it so that all who go through among my people may find peace when they come in and leave it when they go out.

Now, you see the Comanche lands originally extended to the Rio Grande, and it was gradually hewn down to a small reservation, but they always felt that they went to the Texas line under these new treaties.

The CHAIRMAN. These hearings before the House will be made a part of this record.

Mr. GORE. Yes; it is very interesting, the whole hearing, and I am sure the Senators will enjoy the testimony of Governor Taylor and General Scott, as well as that of the old Indians.

The CHAIRMAN. Now, Senator, have you any of these Indians here that you want to call and introduce to testify?

Mr. GORE. Senator, I think the record we made last winter is so complete, and we had the Indians here then who were present at the

council, that I hardly think it is necessary to go into it here. However, if any of them desire to be heard it is all right.

The CHAIRMAN. At this stage I will put in the names of those witnesses who appear here to-day, so as to show that they are interested in the proceedings and they are all heartily in favor of this measure and are here to be examined if you want to examine them. However, most of them are too young to have been witnesses at the time. They can only testify that they thought their lands went to the Texas line, wherever it was.

Mr. GORE. And they thought they went to the middle of the river. There is no question, under the understanding and the treaty, that they went to the Texas line.

The CHAIRMAN. The list of those present may be put into the record.

(The list is as follows:)

W. J. Cizek, Ah-pe-ah-tone, Kiowa Bill, Frank Methvin, Delos Lonewolf, Wilbur Pewa, Willie Ahdosy, Ki-You (Nahno) Ned Brace, Guy Quoetone, Albert Attockkle, Doctor Rowell, and Tennyson Berry.

The CHAIRMAN. I think the report on 178 was a favorable report?

Mr. GORE. Yes, sir.

The CHAIRMAN. The one difference is that in H. R. 178 they proposed to give to the Indians the whole 100 per cent, while this bill only proposes to give them 62½ per cent, and the State the other 37½ per cent.

Mr. GORE. Yes; following the Bratton bill.

The CHAIRMAN. I understand that the Indians have chosen someone as their spokesman.

STATEMENT OF FRANK METHVIN, A KIOWA INDIAN

Mr. METHVIN. There is not much I can say. Unfortunately we realize that we have no legal claim, but we feel we have every moral right, and we feel that this committee, as well as the two Houses, will do all that they can for us in this matter. All has been said that could be said in the previous hearing.

The CHAIRMAN. Do any of the rest of you folks have anything to say?

Ah-pe-ah-tone, have you anything to say?

STATEMENT OF AH-PE-AH-TONE, A KIOWA INDIAN, FORMER CHIEF OF THE KIOWAS

Mr. AH-PE-AH-TONE. Your honor, ladies and gentlemen, Senators of this committee, I beg to state to-day in the presence of you that if this matter is taken up before this committee that we have a moral right and you honorable gentlemen at this time will take action because we are entitled to the same. And we would like to get done with this as soon as possible, right away, and get home. Thereby I feel everything in this matter will be satisfactory. That is all I have to say.

Mr. GORE. You gentlemen will observe that this resolution establishes a trust fund; and there are unallotted children; there have been a number of children born who have no home or land or any-

thing else, and this takes care of the new-borns, as well as it constitutes a trust fund for the others.

Senator McMASTER. What will this fund amount to, Mr. Chairman?

The CHAIRMAN. I will ascertain from the department what is on deposit there derived from the 12½ per cent royalties. It is understood that the Watson bill, passed two or three years ago, directed the Secretary of the Interior to settle with those who owned this land, and that process of settlement has been going through. The only thing that will accrue here after distribution is the 12½ per cent royalty, and then bonuses were collected by the Secretary of the Interior. That is all there is here. I will undertake to ascertain from the department just what is impounded by the department as a result of the royalties and bonuses. It amounts to approximately \$365,000 for the State at this time.

Mr. GORE. The amount is, I think, \$1,300,000, and the bonuses \$95,000. Under the Red River relief act, which I have here, there were other moneys.

The CHAIRMAN. Yes; but that is out of our hands already. That was settled by the Watson bill.

Mr. GORE. That is supposed to be wound up within a few weeks, probably this month.

The CHAIRMAN. We are only dealing with the royalties and bonuses here.

Mr. GORE. Yes.

The CHAIRMAN. I might say that several million dollars was realized, which was in the hands of a receiver for a good while, and it was a very expensive receivership; but all that straw, that has been thrashed out. There is no way to reach that. The only thing we are dealing with here is the amount of money the Secretary of the Interior has growing out of the 12½ per cent royalty on all those leases, and whatever bonuses that were paid by the holders of those leases. You understand, there has been a great deal of litigation as to who these leases belonged to, but that has all been threshed out, and it is something that we can not touch. We are simply dealing here with what is there for distribution to those who are entitled to royalties and bonuses.

Senator McMASTER. How did this fund get into the Indian Department?

Mr. GORE. Through this relief measure.

Senator McMASTER. When was that passed?

Mr. GORE. It was approved the 4th of March, 1923. It is Public 500, Sixty-seventh Congress; and the Secretary of the Interior was constituted the agent of Congress to find the claims of those who were entitled to any of those funds, and he made expenditures in good faith and with reasonable diligence. Those claimants who made a showing satisfactory to the Secretary were given awards on that land and the resources of the land.

The CHAIRMAN. Seven-eighths of it?

Mr. GORE. Yes.

The CHAIRMAN. But the other one-eighth we are dealing with here.

Mr. GORE. Yes; it was rather an expensive receivership. First and last over \$12,000,000 worth of oil was taken out of the ground, but

there remains only a little over \$3,000,000, a part of which goes to the claimants. Their rights are protected here and under this relief measure of March 4, 1923.

The CHAIRMAN. However, the matter of cost of the receivership came out of the seven-eighths.

Mr. GORE. Yes; that is true.

The CHAIRMAN. And the one-eighth royalty which we are considering here is the money which was impounded from the beginning up to the present time.

Mr. GORE. Now, Mr. Chairman, I ask that the hearings before the House committee on H. R. 178 be attached and made a part of this hearing.

The CHAIRMAN. Is there any objection to that?

Senator LA FOLLETTE. No; I think it should be made a part of the hearing.

The CHAIRMAN. It is ordered that the hearings before the Committee on the Public Lands, House of Representatives, Sixty-eighth Congress, first session, parts 1 and 2, on H. R. 178, a bill authorizing payment of all money received as royalty from the Red River oil lands to the Kiowa, Comanche, and Apache Tribes of Indians, and for other purposes, are made a part hereof and reference is made thereto as a part of this hearing.

Mr. GORE. Mr. Chairman, I might make a suggestion. I would like very much to see this bill favorably reported, subject, of course, to the favorable report of the department, as a bill on its own account. I hope adjustment might be arrived at with Senator Bratton and have it attached, at least, so as to take advantage of the situation.

The CHAIRMAN. I want to make this statement to the committee, that I was importuned to introduce a similar bill to H. R. 178 in the Senate, but I took the position that H. R. 178 had been introduced and I wanted to get the benefit of the testimony on that bill before I made up my mind on it. And after that testimony was taken and I had read it I did not have any hesitancy about introducing the bill. It convinced me that these Indians have a real moral and equitable right to at least a part of these royalties that have accrued, and it was after that that I introduced this resolution. But I am willing to hear the committee, what they want to do with it.

Senator LA FOLLETTE. Mr. Chairman, I personally am not ready to vote favorably to report this resolution until I have had further opportunity to look into this portion of it which is drawn in conformity with the bill now before Senator Bratton's subcommittee with regard to a division of these royalties. And I would suggest that the matter go over until the subcommittee has had an opportunity to take further testimony on that bill.

The CHAIRMAN. What do you think of this suggestion, that the bill be referred to the same subcommittee?

Senator LA FOLLETTE. It will be perfectly satisfactory to me. From the statement that has been made here, and without having had an opportunity to read the hearings on H. R. 178, I will say that I am favorably impressed with the statement made as to the moral claim of these tribes to this fund which has accrued on the

royalties on this property. But the matter that I am particularly anxious to look into further is the question of a division of these royalties, and I think that the question is rather important, inasmuch as we now have pending before the committee a bill which seeks to carry that provision over to all lands on the Executive order reservation.

Senator HARRELD. I will make this further statement: H. R. 178 came to a vote before the Public Lands Committee, and the vote was a tie, 6 to 6. So it was not reported out, but we have every reason to believe that they would not oppose this bill which gives them the 62½ per cent.

Mr. GORE. I might say, in addition to what Senator La Follette has said, that the Indians originally, and very naturally, desired 100 per cent, as the chairman has suggested; but legislation is largely a matter of compromise—politics is always a matter of compromise, and there were those who thought that the State should have a certain percentage of it and this bill is the outgrowth of that suggestion, and this bill is drawn as a result of that suggestion and has the approval of the department.

Senator LA FOLLETTE. The point I am making is that the committee has not yet acted on this bill which is more general in character and personally I would feel that the committee should pass on the bill establishing the general policy before they act on a matter involving that policy, as it was involved in the smaller proposition.

The CHAIRMAN. Now, in that connection I want to say that the equities in this bill, in my judgment, are stronger than they are in the Bratton bill for this reason: The Indians really claim this by a treaty of right. There is some dispute in regard to Executive order lands, as to whether the Indians have any title to any part of those Executive order lands, except that part which they occupied. I think you will learn that in your hearings.

Senator LA FOLLETTE. We have not gone very far with the hearings.

The CHAIRMAN. The contention was up last year and that point was raised, and it was claimed they could only claim that part of the land which they occupied. In this case it seems to me the equities are a little stronger. I may be wrong about that. What shall we do with it, gentlemen, shall we refer it to this committee or hold it in abeyance?

Mr. GORE. I think it would be a good idea to refer it to the same committee.

Senator LA FOLLETTE. It would be perfectly satisfactory to me, Mr. Chairman, to have it referred to the subcommittee, and my only suggestion and the point I was raising was not with regard to the equity of the Indians, but with regard to this general policy of the division of the royalties.

The CHAIRMAN. In that connection I will say this: The law directs that these funds go to the State—the leasing act of 1920, directs that this money shall be used for schools and roads.

Senator McMASTER. That is the State law?

The CHAIRMAN. No; that is the leasing act of 1920. It shall go to the State for the purpose of schools and roads.

Senator McMASTER. Does this resolution confine that matter—

The CHAIRMAN (interposing). I say it shall go to the State, be distributed to the State under the terms of the leasing act of 1920.

Senator McMASTER. But that does not mean that this particular class of people would receive any special benefit from their lands.

The CHAIRMAN. That is what I was going to explain. In Oklahoma schools are already established, even among the Indians, and they have a right to attend the public schools. As a consequence they get the benefit of this money in the public schools, they in common with everybody else, of course. And also of the public roads. There are citizens there, and it is not like a place where they were on a reservation and could not mix with the white people. But they do get a benefit, because they do attend the public schools, and have a right to do so; notwithstanding their property is not taxed, they have a right to attend the public schools, and they are everywhere in the State at their doors, as well as at the doors of the white people. They will get, in common with the white people, a very great benefit out of the 37½ per cent that goes to the State.

Now, in a great many outlying school districts of the State the length of the term of the school depends on the amount of money they have for that purpose. This would increase the length of the terms of those schools, because it would increase the fund that is available for that particular vicinity.

Senator McMASTER. That is the question I was asking. Do those funds go directly into the funds of the general treasury of the State or into the school funds of the State?

The CHAIRMAN. Absolutely into the school funds.

Senator McMASTER. To be expended according to that apportionment there?

The CHAIRMAN. Yes.

Senator McMASTER. But they would not get any special advantage in those outlying districts. It does not go especially to them.

The CHAIRMAN. The only thing is that it increases the length of the term, and those that live in those districts have a longer term; because when the money is exhausted the schools have to close. That is the law in Oklahoma.

Senator LA FOLLETTE. The question that has come up in my mind is whether or not Congress should adopt a rule permitting the States to levy a gross production tax on the oil produced on those reservations, or whether it should adopt the rule laid down in these bills for a division of the Indian royalties on this basis.

The CHAIRMAN. In Oklahoma in the Osage Nation, the State collects 3 per cent gross production tax, and the Osage Council agreed that it might do so. I do not know whether it would stand up or not if it was attacked in a court, but they are willing; and that is going into the same school fund that a part of this will go into. That was attacked by the Five Civilized Tribes, and the Supreme Court held it was not subject to that tax. Am I right about that?

Mr. GORE. Yes, sir.

The CHAIRMAN. But this does not come under that law because the court distinctly held that the Indians had no legal claim to this. We are only giving to them what they are entitled to under moral obligations, or equities, because of the decision of the court. Consequently Congress has plenary power to do what it pleases.

Senator LA FOLLETTE. I do not think there is any question about the power. It is simply a question of policy.

Mr. GORE. Senator, will you pardon me? I overlooked one observation that I think is very pertinent. The Department of Justice first took the position, when this controversy between Oklahoma and Texas arose when the United States was contemplating intervening, on a report made by an Assistant Attorney General who was delegated to make an investigation, that the land belonged to these tribes. He prepared a letter on May 5, 1918. I could supply that letter, in which he held that the lands belong to the Indians and they were entitled to the revenues issuing from the lands, and a suit was brought. Directions were given to the United States district attorney in Oklahoma to recover those lands in the name of the Indians, and I believe the suit was actually brought. But later, in 1919, I think, on October 1, another Assistant Attorney General prepared another report upon this question and reported that the legal status of the land was in doubt and that the Government was afraid to assume position and claim it for the Government or to claim it for the Indians, adding this, unless as a matter of general policy it should see fit to concede these lands to the Indians. I should have brought that along, and I will be glad to submit it to the Senators, because that is the record in the case.

Later, in 1920, when they actually intervened, they set up the claim that the land belonged to the United States. The court held as has been stated.

There is a delegation of Indians here representing the three tribes. They are here at considerable expense. I believe the expense is part of a fund contributed by their tribesmen, friends and fellows, to send them here, and they are very anxious that the matter should be disposed of and that they should be relieved of this expense, as soon as possible.

I do not mean by that to press the matter, or take it away from the Senators' most convenient time to consider it, but it struck me this way, Mr. Chairman, you might hold the bill in abeyance at present, and I have this in mind, Senator La Follette, this other bill may take considerable time—this Bratton bill. While, of course, I do not know how much controversy there is, but I believe, for Senator La Follette, particularly, he has raised the question, that you from these hearings, you will find the Indians at least ought to have 62½ per cent, whatever policy is adopted with reference to the public land, and many of us think, in the first instance, they ought to have 100 per cent. I think, however, this is a matter for legislation, and it is a matter for adjustment. The Indians are acquiescing, and those who represent them are acquiescing in what seems to be possible of obtaining.

The CHAIRMAN. So far as Senator Bratton's bill is concerned, we had it up last year, and I am convinced it is a proper policy for the Government to pay the States 27½ per cent.

Mr. GORE. Yes, sir.

Senator LA FOLLETTE. Mr. Chairman, of course, I was not a member of the committee last year; I am a new member of the committee, and was not at that time, and have no knowledge of any previous discussion of this matter when it was before the committee,

but I am not yet convinced, as the Senator from Oklahoma says he is, with regard to this proposition, and I have no desire to delay the consideration of this resolution, excepting as it attempts to state a policy with regard to the division of these royalties, and if the committee, of course, desires to take action on this resolution, I am not in a position to prevent it, but I wish to give notice that I shall reserve the right to offer amendments to the resolution, and should a further investigation convince me that this distribution of royalty is unequitable, to fight the proposition on the floor.

Mr. GORE. Do you mean unequitable from the standpoint of the Indians or of the State?

Senator LA FOLLETTE. From the standpoint of the Indians.

Mr. GORE. Yes, sir. I was wondering about this, whether this would commend itself to your suggestion. I throw it out only as a suggestion. I appreciate your position. You do not want this bill to constitute a precedent under the Bratton bill?

Senator LA FOLLETTE. Precisely.

Mr. GORE. Under the leasing the general policy has been adopted, and I think it was wise, a 20 per cent of past production was given to the State, and 37½ per cent of future production was given to the State. Of course, that would be advantageous to the Indians and yet would be equitable to the State to that extent. Now, as I was wondering whether that would commend itself to you as avoiding any precedent with respect to this measure? That sort of an alteration would conform it to an established precedent, and not, of course, constitute a precedent with reference to the Bratton bill.

Senator LA FOLLETTE. Senator Gore, as I stated before, I have not had an opportunity to look into this matter as thoroughly as I desire to do, and I am not prepared to state with regard to this question of policy on royalty, as to exactly what would be equitable and what would not be.

Mr. GORE. Yes, sir.

Senator LA FOLLETTE. And it was because that proposition is raised in Senator Bratton's bill, and is now before the committee, that I feel that inasmuch as this resolution is drawn to conform to that bill, that the likely procedure would be for the committee to pass upon the policy of that proposition, in general, before it attempted to pass upon it in the particular instance.

Mr. GORE. Yes, sir. I can see the force of your observation, unless you should think the inherent merits of this case would justify the Bratton bill, whether the legislation ever passed at all. I think you should be relieved of any embarrassment in that connection, but I have so much confidence in the merit of this measure that I shall be very glad to have it given the most thorough research, and I entirely agree with your reactions, so far as that is concerned, speaking in the abstract.

Senator LA FOLLETTE. I am trying to make it clear that any objection I have to immediate consideration of this are not against the general equity of Oklahoma to the Indians and the rights involved, and that, too, goes for my feeling with regard to Senator Bratton's bill. I think those who seek relief under that bill; that is, those who actually went in on those reservations, and, in good faith, expended money, that they are entitled to relief.

Mr. GORE. Yes, sir. I wonder how this would do? The Senator is reserving the right, if he considers it is not equitable, to raise the point—

Senator BRATTON. Mr. Chairman, I should like time to go over the hearings. I never heard of this matter until very recently. It involves a very substantial sum, I would like to familiarize myself with it a little further.

Senator LA FOLLETTE. Furthermore, we do not have but very few members of the committee in attendance this morning. This is more really in the nature of a subcommittee meeting.

The CHAIRMAN. About when will you meet? Do you have any idea when you folks will be able to report on the Bratton bill?

Senator LA FOLLETTE. I have been subject to the pleasure of the chairman in the matter. Unfortunately, I can not meet with him this afternoon, but, subject to other committee meetings, I shall be at the service of your committee at any time to go ahead.

Senator BRATTON. I had planned to have a hearing this afternoon, but the Senator tells me he expects to speak in the Chamber, and it is my purpose now to resume hearings Friday morning.

The CHAIRMAN. I suggest each member take a copy of these hearings and run through them, and I will take it up at the next meeting.

Mr. GORE. I was going to suggest to leave it in the present status.

The CHAIRMAN. Yes. I hope we can do it at the next meeting, as I would like to make an early report.

Senator BRATTON. I will announce that the other subcommittee will resume Friday morning at 10 o'clock.

Mr. GORE. If I may be pardoned one further remark. If the chairman could ascertain the consensus of opinion of the members and we could be advised. I do not want the hearing called, of course, except at the convenience of the chairman. While this is a most vital matter to the Indians, yet I realize it is only one of many vital things from the standpoint of the Senators.

The CHAIRMAN. I would suggest this: That each of you who are here, after you get your mind made up, just simply say to me that you are ready to take the matter up, and I will use my best judgment about calling the committee together at a convenient time.

Senator LA FOLLETTE. We will be very glad to do that.

The CHAIRMAN. All right; that is all we can do this morning, then.

(Whereupon, at 11.30 o'clock a. m., the committee adjourned to meet at the call of the chairman.)

170.5
15
DEVELOPMENT OF OIL AND GAS MINING
LEASES ON INDIAN RESERVATIONS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

S. 1722

A BILL TO PROVIDE FOR THE DISPOSITION OF BONUSES,
RENTALS, AND ROYALTIES RECEIVED UNDER THE PRO-
VISIONS OF THE ACT OF CONGRESS ENTITLED "AN ACT
TO PROMOTE THE MINING OF COAL, PHOSPHATE, OIL,
OIL SHALE, GAS, AND SODIUM ON THE PUBLIC DOMAIN,"
APPROVED FEBRUARY 25, 1920, FROM UNALLOTTED LANDS
IN EXECUTIVE ORDER INDIAN RESERVATIONS
AND FOR OTHER PURPOSES

S. 3159

A BILL TO AUTHORIZE OIL AND GAS MINING LEASES UPON
UNALLOTTED LANDS WITHIN EXECUTIVE ORDER
INDIAN RESERVATIONS

FEBRUARY 27, MARCH 5, 9, AND 10, 1926

Printed for the use of the Committee on Indian Affairs



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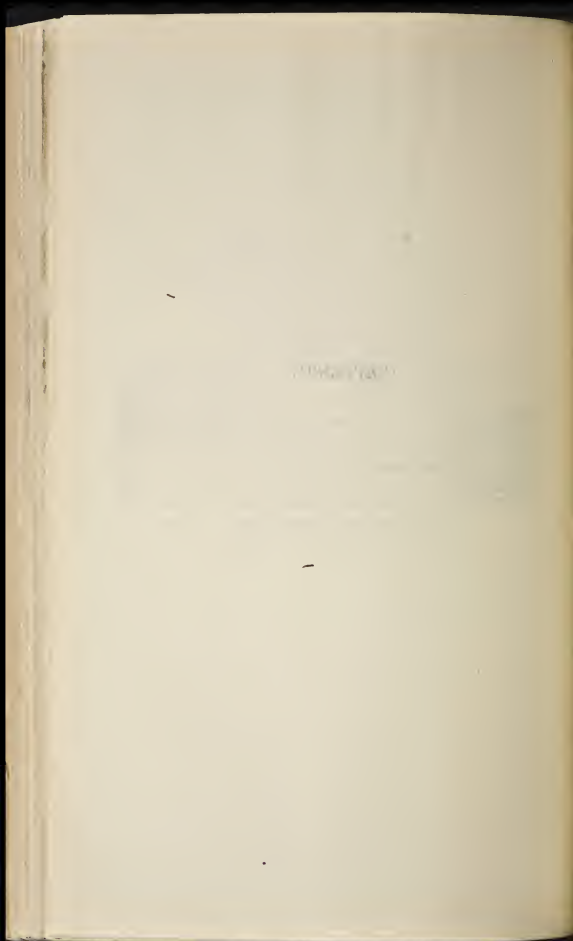
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DEVELOPMENT OF OIL AND GAS MINING LEASES ON INDIAN RESERVATIONS

SATURDAY, FEBRUARY 27, 1926

UNITED STATES SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10.15 o'clock a. m., Senator Samuel G. Bratton presiding.

Present: Senators Bratton (chairman of subcommittee), La Follette, and Cameron.

Senator BRATTON. The committee will come to order. We are now considering Senate bill 1722 and Senate bill 3159, each relating to a development of oil and gas mining leases upon unallotted lands within Executive order Indian reservations.

Senator LA FOLLETTE. Mr. Chairman, was 1722 also referred to the Senate committee yesterday? I thought you made the statement that 1722 would not be considered.

Senator BRATTON. It is not insisted upon.

Senator LA FOLLETTE. And that 3159 would be the one to be considered by the committee.

Senator BRATTON. S. 3159 was drafted and submitted to Senator Jones before it was introduced, and he is perfectly satisfied with that measure and is entirely willing to have it pass instead of his. Of course if 3159 should not be acted upon he might then desire his bill to be considered. Perhaps it is best to say that we are considering 3159 also.

(The two bills, S. 1722 and S. 3159, are here printed in full, as follows:)

[S. 1722, Sixty-ninth Congress, first session.]

A BILL To provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, from unallotted lands in Executive order Indian reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That deposits of coal, phosphate, sodium, oil, oil shale and gas, and lands containing such deposits owned or held by the United States within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupation of any Indians or Indian tribe, but not included within any individual allotment nor occupied by Indians who have bought and paid for the same, shall be subject to disposition in the form and manner, and under the limitations provided by, and to the persons, associations, and corporations defined in, the act of Congress approved February 25, 1920 (Forty-first Statutes at Large, page 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," except, however, that all moneys received from bonuses, rentals, and royalties in connection with the leasing

of such deposits and lands shall be apportioned as follows: 10 per centum thereof shall be paid into the Treasury of the United States and credited to miscellaneous receipts; 52½ per centum thereof shall be deposited in the Treasury of the United States to the credit of the particular group, tribe, or tribes, in occupation of the reservation or withdrawal within which the leased deposits or lands are located, and shall draw interest at the rate of 4 per centum per annum; the moneys so deposited to the credit of such Indians shall be available for appropriation by Congress for the expense of administration and for the use and benefit of such Indians; and 37½ per centum shall be paid by the Secretary of the Treasury, after the expiration of each fiscal year, to the State within the boundaries of which the leased deposits or lands are located, said moneys to be used by such State, or subdivisions thereof, for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct.

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations to accomplish the purposes of this act, including regulations for the protection of the property and buildings of the Indians and of the United States, and for reasonably safeguarding the use and occupation of the surface of the lands by the Indians, and for indemnifying the Indians against damage to their improvements, and for the preservation for the use of the Indians of any surplus water over and above so much thereof as may reasonably be needed by the explorer or operator for further exploratory or operating purposes from any well, which when completed may produce only water.

SEC. 2. All persons, associations, and corporations who have heretofore applied for permits or leases upon any of the deposits or lands described in section 1 hereof may have their applications reinstated in the order of original filing; or, if they have heretofore received permits or leases upon any such deposits or lands, then they may have the permits or leases heretofore issued to them confirmed and extended for a full term, commencing with the date of confirmation, by the Secretary of the Interior, by making and filing application for such reinstatement or confirmation in the proper district land office at any time within ninety days next after the date this act takes effect, notwithstanding any final rejection of such former application or cancellation of such permit or lease that may have been had heretofore, whether by suit in court or by order of the Secretary of the Interior.

[S. 3159, Sixty-ninth Congress, first session]

A BILL To authorize oil and gas mining leases upon unallotted lands within Executive order Indian reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any Indians or tribe may be leased for oil and gas mining purposes in accordance with the provisions contained in the act of May 29, 1924 (Forty-third Statutes, page 244).

SEC. 2. That the proceeds from rentals, royalties, or bonuses of oil and gas leases upon lands within Executive order Indian reservations or withdrawals shall be distributed as follows: Thirty-seven and one-half per centum shall be paid in lieu of taxes to the State within the boundaries of which the leased lands or deposits are located, such money to be used by such State or subdivision thereof, for the construction and maintenance of public roads, or for the support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided, however,* That a portion of such money, to be determined by the legislature of such State, shall be used by such State, or subdivision thereof, for the construction and maintenance of public roads within the respective reservations in which the leased lands are situated and public roads contributory thereto and forming a part of the same highway system, or for the support of public schools of the State or other public educational institutions attended by Indian children; 62½ per centum shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created, and shall draw interest at the rate of 4 per centum per annum and be avail-

able for appropriation by Congress for the expense of administration and for the use and benefit of such Indians.

SEC. 3. That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to allow any applicant to whom a permit to prospect for oil and gas under lands within an Indian reservation or withdrawal created by Executive order has heretofore been issued in accordance with the provisions of the act of February 25, 1920 (Forty-first Statutes, page 437), or the holder thereof, to prospect for a period of two years from the date this act takes effect, or for such further time as the Secretary of the Interior may deem reasonable or necessary for the full exploration of the land described in his permit, under the terms and conditions therein set out, and a substantial contribution toward the drilling of the geologic structure by the holder of a permit thereon may be considered as prospecting under the provisions hereof; and upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any permit the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands if there be that number of acres within the permit. The area to be selected by the permittee shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they may accrue for that year, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided further*, That the Secretary shall have the right to reject any or all bids: *Provided further*, That any applicant for permit, under the provisions of said act of February 25, 1920, which permit was not issued, for any lands covered by the provisions of this act, who shall show to the satisfaction of the Secretary of the Interior that he, or the party with whom he has contracted, has done all the following things, to wit, expended money or labor in geologically surveying the lands covered by such application, has built roads for the benefit of such lands, and has drilled or contributed toward the drilling of geologic structure upon which such lands are located, may have the right of prospecting and leasing as provided in this section.

Senator BRATTON. Mr. Jones, of Utah, is present. He has given the subject a great deal of thought. Mr. Jones, will you state your name and make your statement in your own way?

STATEMENT OF SHIRLEY P. JONES, SALT LAKE CITY, UTAH, REPRESENTING UTAH SOUTHERN OIL CO.

MR. JONES. Mr. Chairman, I represent the Utah Southern Oil Co., and I also represent two persons who received permits and two persons who applied for permits, but were not granted permits, and who are given relief under section 3 of S. 3159.

For the information of the committee I will just give a brief statement of this legislation and put in the record some matters with reference to it.

Senator BRATTON. Mr. Jones, this subject is very interesting to me, particularly the legal situation, and for my part if you will make your statement at length instead of in brief I shall appreciate it.

Mr. JONES. Under the act of February 25, 1920, which is referred to and known as the general leasing act—I will leave a copy of that for the record—the public lands of the United States were opened for leasing by the Government for oil and gas, and in compliance with the terms of that act persons would make application to the Secretary of the Interior for a permit to prospect for oil and gas. That permit would be granted, and the individual was then permitted to go on the public domain and prospect for oil and gas, and if he discovered oil or gas he was entitled to a lease upon one-fourth of the land at a royalty of 5 per cent; upon the remaining three-fourths he was entitled to a preferential right at a royalty of not less than $12\frac{1}{2}$ per cent or on such terms as should be fixed by the Secretary of the Interior, the total area being 2,560 acres.

Under this act, which I will call the general leasing act, certain people made application for permits upon Executive order Indian lands in the States of Arizona, New Mexico, and Utah. The Department of the Interior entertained the applications and a hearing was held in the department. The Commissioner of Indian Affairs contended that the general leasing act did not apply to these Indian lands, and the permittees or applicants contended that it did.

On June 2, 1922, Secretary Fall rendered an opinion in which he held that the general leasing act applied to Executive order Indian lands, or lands withdrawn by Executive order for Indian purposes, and under that ruling twenty permits were granted to prospect for oil and gas upon the Navajo Reservation, sixteen permits in Utah and four in Arizona. There were approximately 375 persons in addition, who made application for permits, but the applications were not granted and permits did not issue, for one reason and another.

Eventually Secretary Fall went out of office, and Secretary Work came in, and this same matter was submitted to him and he reaffirmed the attitude of Secretary Fall and held that the general leasing act applied to these Executive order lands. The Indian Bureau and the Indian Rights Association kept insisting that the general leasing law did not apply to these lands, and finally the President and Secretary Work at almost the same time asked Attorney General Stone for an opinion upon this subject.

On May 27, 1924, some two years after the permits had been granted, the Attorney General rendered an opinion that the leasing act did not apply to Executive order lands. The Interior Department immediately notified all persons who had received permits that no leases would be granted upon the Executive order lands, and rejected all the applications which had not gone to permit. However, the permittees had in the meantime, under sanction of the Government, expended very large sums of money in exploration and development work upon their permits, as they were required to do under the law. The law at the time the permits were granted required the permittees to drill within six months and to discover oil or gas within two years, so that under their ob-

ligations to the Government the permittees were compelled to go on the land and attempt to discover oil.

Now, this land, all of it so far as Utah is concerned and most of it in the other States, is a desolate desert waste. On a very large part of it there are no Indians, there is no vegetation, no life whatever. The land in Utah where the permits were granted is 65 miles from a railroad and absolutely inaccessible. Roads had to be built, water had to be conducted for 20 miles, coal mines had to be developed, and great hardships were endured in opening up that territory.

So that when the Government in July, 1924, notified the permittees that no leases would be granted the permittees had gone on this uninhabited desert country and spent over \$300,000.

Senator LA FOLLETTE. And how many did you say there were?

Mr. JONES. There were 16 in Utah and 4 in Arizona.

Senator CAMERON. Pardon me a moment, Mr. Jones. Why were the other permits turned down? Can you give any good reason?

Mr. JONES. Yes; I will come to that in just a minute, Senator.

In developing the country these permittees joined together and contributed toward the drilling of wells. There were three wells commenced on those Indian lands, none of which went to completion, to the discovery of oil in commercial quantities.

In addition to the twenty permittees there were a few applicants who had filed for permits and whose applications were held up because they conflicted with power-site questions. Here is the land, as it is shown on the map. The Navajo Reservation comes on the north to the San Juan River in Utah, and on the west to the one hundred and tenth meridian. This little piece here [indicating] is all that is involved in Utah. It then goes along the northern boundary of Arizona, and takes in the part that is mounted in yellow here, and runs over into New Mexico.

Now, where the San Juan River makes these bends, as you will see here, just east of the one hundred and tenth meridian, two applicants filed, and their applications were held up because they conflicted with proposed power-site reservations. Permits were granted all around them, permits that were applied for at a later date than these two. So that these two applicants and three or four more who were in that same situation and were held up on questions of conflict, joined with the permittees and contributed to the drilling of these test wells, building of the roads into that country and geologically surveying the land.

As to the other applications, so far as I can determine they were simply rejected upon the ground that they were in an Indian reservation. So far as I know, these twenty permittees and these half dozen applicants are the only ones who went down there and actually did physical development work on the ground, showing that they were acting in perfect good faith and that they were earnest and sincere in their desire to develop that region.

Senator LA FOLLETTE. As I understand it, you are contending for relief only for those who did expend money in the development of this land?

Mr. JONES. That is right.

Senator LA FOLLETTE. You are not appealing for relief for any of these other applicants who merely filed and were rejected and who did not expend any money?

Mr. JONES. No, the bill does not apply to them.

After May 27, 1924, the Attorney General rendered his decision that the leasing act did not apply, and he seems to base it upon this ground. There are three kinds of Indian reservations: Treaty reservations, reservations created by congressional action, and Executive order reservations. As to the first two classes there seems to be little doubt that the Indians have a vested right in those reservations, but as to the Executive-order reservations there is considerable doubt. The Attorney General seemed to go upon the theory that the three came within the same classification and that the Executive-order lands should be governed by the same rules, at least as to the equitable title of the Indians in those lands, as the treaty or congressional reservations.

So the Government brought suit to cancel these permits. That suit was brought in July, 1924, in the Federal district court of Utah, the Government alleging that the Secretary of the Interior had no power to issue these permits. The permittees answered and alleged that the leasing act did apply and that they had equities which the Government could not disturb. That case was tried in the Federal court in Utah, and on April 27, 1925, the Federal court sustained the contention of the permittees and dismissed the case.

The Government appealed the case to the circuit court of appeals for the eighth circuit. It was argued last fall in Denver, and there were three judges heard it. I understand from attorneys in Denver—this is just hearsay—that the circuit court divided two and one, two of them favoring sustaining the Utah court and one of them somewhat on the fence, and in that situation they certified the case to the Supreme Court of the United States for an answer to two questions: First, does the leasing act apply to Executive-order lands, or withdrawals for Indian purposes? Second, if the leasing act does not apply, is the Government estopped where expenditures have been made, as in this instance, from contesting the validity of those permits? The matter came to the Supreme Court and was docketed on the 8th of January, and I am advised by the clerk of the Supreme Court that it may be a year and a half or two years before that case can be heard.

I will offer at this time for the record the opinion of Secretary Fall, the decision of the Federal court in Utah, and the transcript of the testimony, which is a part of the record in the Supreme Court now, in the Federal court of Utah.

In this connection let me call your attention briefly to the decision of Judge Johnson. He said that the case seemed to have been brought by the Attorney General to cancel permits, upon the ground that the Secretary did not have authority to issue them. He said:

The land it is claimed was set apart by Executive order for Indian purposes, but it does not appear that any Indian rights have attached. It is as much in the future, so far as the Indians are concerned, as it was on the 17th day of May, 1884, the day the order was made.

Now, this is important here:

The title both legal and equitable continued and was in the Government at the time this permit was issued. That being true, the Executive order could have been set aside at any time—could be set aside yet by the Executive.

My impression is, gentlemen, that the Secretary of the Interior could have set it aside under the authorities, and especially so in view of the leasing act wherein he is specifically given authority under certain rules and regulations to issue permits upon Government land.

Now, that is a very important point. The Federal court held that under the decisions the mere act of the Secretary of the Interior in granting these permits under the leasing act was a setting aside of the Executive order, inasmuch as he was the executive officer and agent of the President. He says:

The equities are all in favor of the defendant. The claim of the Government is, as I view it, highly technical in that no substantial rights with respect to the Government or anyone else are alleged or claimed. There is no question of fraud here; no claim that these lands have been occupied by Indians or can possibly be occupied by Indians in any practical way. It is a desert, unfit for occupancy by any human being.

And so he dismissed the case.

That being the situation, those of us who had gone in there and expended money came to Congress last year and applied for relief. There was a bill pending, S. 876—

Senator BRATTON. Before you leave the legal situation, have you a copy of the opinion of Attorney General Stone?

Mr. JONES. Yes. I am going to put it in now, Senator.

S. 876 was pending, which provided for a disposition of royalties on Indian reservation Executive order lands under the leasing act. That bill passed the Senate—it came from this committee—and went to the House. The House amended the bill to extend specifically the provisions of the act of February 25, 1920, the leasing act, to Executive order lands. That came back to the Senate, and the Senate approved that amendment. The House, however, in disposing of the royalties had copied the language of the act of May 29, 1924, and had provided for a production tax by the States upon the oil that was produced there. This committee and the Senate disapproved that and would not recognize it, and so the House conferees agreed to the Senate amendment, which is practically the same as it is in this bill of Senator Bratton's to-day.

The Senate insisted that the royalties should be divided in this way, that 37½ per cent shall be paid by the Secretary of the Treasury in lieu of taxes to the State within the boundaries of which the leased lands or deposits are located, such money to be used by such State or subdivision thereof for the construction and maintenance of public roads, or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and 62½ per cent be paid directly to the Indians.

Now, the bill that Senator Bratton has introduced is a little more liberal to the Indians than this provision that the Senate insisted upon last year. Senator Bratton's bill gives 62½ per cent directly to the Indians and 37½ per cent to the State, with a string tied to it, that the State must spend a portion of that money in the Indian reservation.

That measure in that shape passed both Houses and went into conference, and then upon the adoption of the Senate's amendment with regard to the royalty it came back to the House on the last day of the session and was killed on a point of order, and the legislation there died.

Senator Jones then introduced S. 1722, to cure the situation. That bill was referred to the department, and the department came back and suggested that instead of S. 1722 it would favor a bill similar to the one that Senator Bratton has drawn, which would put these lands under the Indian leasing act instead of the general leasing act, and that is the way Senator Bratton's bill is drawn.

I will offer for the record S. 876, as amended, which is Union Calendar No. 483 and the report thereon from the House Committee on Indian Affairs, which contains in full the opinion of Attorney General Stone; and then the conference report. That completes the record as it was last year.

I also offer for the record the general leasing act and the act of May 29, 1924, which is the Indian act which Senator Bratton's bill amends.

Senator BRATTON. Mr. Jones, you referred a while ago to a bill proposed by the Department of the Interior in connection with this report on Senator Jones's bill. Is this [indicating a paper] a copy of that proposed bill? If it is, I think it would be well to let it go into the record so that the attitude of the department might be reflected.

Mr. JONES. There is a bill, Senator Bratton, which describes the department's attitude a little better than this. This [indicating another paper] is the department's bill, but the bill was introduced in the House with some slight changes and additions. This is Mr. Hayden's bill. There is a favorable report from the department on Mr. Hayden's bill; I will offer that for the record. Now, the only difference between Mr. Hayden's bill and Senator Bratton's bill is that Mr. Hayden's bill does not contain the proviso at the end of section 3 which takes care of these half dozen persons who applied for permits but did not get them and who yet went in and did work the same as the permittees. And in the provision with reference to the division of royalties between the State and the Indians Mr. Hayden's bill and the department's bill give the royalties to the State with an absolute prohibition against their being used anywhere except on the Indian reservation and roads leading thereto and forming a part of the same highway system, or schools attended by Indian children, while Senator Bratton's bill provides that the royalties shall go to the State for the benefit of roads and schools and that a portion of it shall be spent for those other purposes.

Senator BRATTON. Mr. Jones, I have here the original letter from the department, addressed to Senator Harreld, reporting on Senator Jones's bill, S. 1722, with the original draft of their proposed measure.

(The letter and accompanying draft of bill referred to are printed in full herein following the statement of Mr. Jones.)

Mr. JONES. To conclude briefly, the status of it is this. The case is pending in the Supreme Court of the United States. If the Supreme Court of the United States—and this goes directly, Sena-

for La Follette, I think, to the question that you probably had in mind yesterday with reference to section 2 of Senator Bratton's bill—sustains the decision of the Utah court the Indians will get absolutely nothing from this land, so that this bill is necessary to protect the Indians in the event the Supreme Court should hold the same as the Utah court, and there is a very good likelihood that they will.

The royalty provision here follows the language of the general leasing act as to other public lands, and that leasing act gives 37½ per cent to the States for roads and schools, 52½ per cent to the reclamation fund, and 10 per cent goes into the Treasury. So that Senator Bratton's bill is a good deal less liberal to the States and a great deal more liberal to the Indians than the general leasing act is to the white people.

Under the act of 1924, the Indian leasing act, the States are authorized to levy a production tax, so that each State is left free to tax as it sees fit instead of having a uniform tax as provided in this bill of Senator Bratton's.

Section 1 of Senator Bratton's bill simply gives the department the right to lease these lands under the Indian leasing act.

Section 2 provides for the disposition of the royalties, and section 3 states the relief measures, which take care of these 20 permittees and the half dozen applicants. Section 3 of the bill takes care of these few permittees and applicants in language taken generally from the general leasing law.

SENATOR LA FOLLETTE. Mr. Jones, were you present at the House committee hearings?

MR. JONES. Yes.

SENATOR LA FOLLETTE. Were the Senate amendments agreed to there with regard to section 3?

MR. JONES. Yes. This proviso was approved, and then it was suggested—I do not know what they decided—that there should be some date put in here, to allow any applicant to whom a permit to prospect for oil and gas had been issued up to some date in 1923. But that is immaterial, because there were no permits except these 20.

SENATOR LA FOLLETTE. In your opinion is the language of section 3 of Senator Bratton's bill so drawn as to limit the relief granted under this proposed bill specifically to those permittees, or those who had applied for permits and those who had been granted permits and who expended money? In other words, is it so drawn that none of the other applicants will receive relief under this bill?

MR. JONES. That would be the effect of it. But I will say this to you, Senator La Follette, that it was drawn that way over our very vigorous protest. Although we are not personally interested in those 375 other applications, we felt that anyone who had gone in there and filed on that land had manifested sufficient good faith so that he should be reinstated, but the Indian Rights Association and the Interior Department absolutely refused to recognize them unless they had received a permit or had done actual work there.

SENATOR LA FOLLETTE. And in your judgment, to put the question again, section 3 is so drawn that only those who have given additional evidence of good faith, through the expenditure of money, will receive relief.

Mr. JONES. That is right. They actually have to geologically surveyed the lands and built roads for the benefit of the lands, and drilled or contributed toward the drilling of the geological structure.

Now there is just one point more. Former Governor Hagerman of New Mexico is the commissioner of the Navajo Indians at this time. The Navajo Council met and considered this royalty provision as it is in Senator Bratton's bill—not this particular provision, but they met and considered the disposition of the royalties from this land. They felt that they were in danger of losing everything by this court decision, and they voted to permit the leasing of this Navajo land if they got one-half of the royalties, the other half to go to the State. So this goes a good deal further than the Navajos themselves are asking it to go.

Senator LA FOLLETTE. As a matter of fact, however, does not section 2 provide for the division of royalties on all of the Executive order reservations?

Mr. JONES. Oh, absolutely.

Senator LA FOLLETTE. Do you know how much acreage that involves?

Mr. JONES. As I understand it, about 23,000,000 acres.

Senator BRATTON. You mean, all Executive order reservations?

Mr. JONES. Yes.

Senator BRATTON. But this particular structure that is involved here, where these applicants filed and where these permittees secured permits, involves about how much, Mr. Jones? It is commonly called the Boundary Butte structure, I believe. If you know the acreage, it might be well to state it at this time.

Mr. JONES. 45,800 acres. The 400 are not involved in this; they absolutely could not come in under Senator Bratton's bill.

Senator BRATTON. But assume that the measure should be enlarged, Mr. Jones, to give them a prior right to secure permits?

Mr. JONES. There would be 375 applications, and 20 permits of 2,560 acres. That would be 1,110,200 acres, assuming that there are 375 applicants and 20 permittees and that each would get the full acreage of 2,560 acres.

On June 30, 1919, Congress passed an act, 41 Statutes, page 3, in which they say:

Hereafter no public lands of the United States shall be withdrawn by Executive order, proclamation or otherwise for or as an Indian reservation except by act of Congress.

So that you have this situation. The treaty lands are leased upon the idea that the State may place a production tax on them. The Executive order lands are, under Senator Bratton's bill, leased upon the theory of a definite tax fixed by the Government.

Now then, it seems to me that the question is, where is the title to those lands? I do not know of any decision—and the Attorney General's decision has gone further than any I know of—that holds that these Indians have title to Executive order lands; because the President may tomorrow restore them all. As an actual fact, in Utah and in northern Arizona there never have been any Indians on the land. They can not live there, they can not exist there. There never has been, either technically or actually, an Indian right attach to any of that land.

Is there anything further that I can comment on?

Senator BRATTON. Based upon your study of this whole subject, Mr. Jones, do you think that these applicants who filed under the act of 1920 but who did not secure a permit, acquired any vested right through the filing of their applications which could be preserved and taken care of in court?

Mr. JONES. No; because even under the leasing law it is rather more or less discretionary with the Secretary whether he grants a permit or not.

Senator BRATTON. So that the mere filing of an application does not carry with it the absolute right to secure a permit?

Mr. JONES. No. But I will say that in the case of those persons that I mentioned, those half dozen who actually went on and, with the knowledge of the department, spent money, they do have a vested right.

Senator LA FOLLETTE. What company did you say you represented?

Mr. JONES. The Utah Southern Oil Co.

Senator LA FOLLETTE. Was that company organized as a result of the permits granted?

Mr. JONES. Oh, no. That company is simply a contractor. The permittees, under the leasing act and with the approval of the Secretary, joined in making a contract with the same company to drill.

Senator LA FOLLETTE. You are the contracting company that was to do the drilling, as I understand?

Mr. JONES. Yes—that actually went in and drilled.

Senator LA FOLLETTE. So that, as a matter of act, your company has no direct interest in these permits, other than the fact that it is the contracting company?

Mr. JONES. That is right.

Senator LA FOLLETTE. Was there any effort made by this group of permittees, or on their part, to get any of these other applicants to join with them in the expenditure of this money?

Mr. JONES. No, I hardly think so. You see, there are different oil structures. For instance, there is the Boundary Butte structure. Boundary Butte comes over so that it is partly in Utah and partly in Arizona and down over near the border of New Mexico. Now, the permittees on that structure joined. Then there is what is called the East Anticline; the permittees on that structure joined. I do not know, really, where the other 375 are located, except that they are on other structures, off of this structure that we were interested in, so of course we had no interest in joining with anybody except the four or five who would be right in the group there and who naturally would join together in the drilling of that structure.

(The various documents submitted by Senator Bratton and the witness, Mr. Jones, are here printed in full, as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, January, 28, 1926.

Hon. J. W. HARRELD,

*Chairman, Committee on Indian Affairs,
United States Senate.*

MY DEAR SENATOR HARRELD: Further response is made to your letter, without date, requesting an opinion on S. 1722. "A bill to provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled 'An act to promote the mining of coal, phosphate,

oil, oil shale, gas, and sodium on the public domain,' approved February 25, 1920, from unallotted lands in Executive order Indian reservations, and for other purposes."

Instead of enacting legislation which would authorize the leasing of unallotted land on Executive order Indian reservations subject to the general leasing act, I believe that authority should be granted for leasing such land under terms and conditions similar to those governing the leasing of unallotted land on Indian reservations created by treaty as provided in the act of May 29, 1924 (43 Stat. 244). I therefore have caused to be prepared and submit herewith a draft of a bill to that effect, and suggest that it be enacted in lieu of Senate bill 1722.

Indian reservations, however created, are under the jurisdiction of the Indian Service and it is believed that it would be much more satisfactory to have the mineral resources of tribal Indian land developed as nearly as possible under the same laws, rules, and regulations, subject to the same local jurisdiction and thus enable the officer in charge of the reservation to enforce the laws of the United States relative to Indian reservations and trade and intercourse with the Indians. This is especially true of the Navajo Indian reservation, which was originally created by treaty with the Indians, additions thereto being subsequently made by Executive order. Oil of a very high grade is now being produced on the treaty part of the reservation under leases negotiated under authority contained in the act of February 28, 1891, and there has been some development work on the Executive order part of the reservation under permits issued by this department during the period it was held that such land was subject to the general leasing act of February 25, 1920.

The Attorney General, on May 27, 1924, held that the general leasing act does not apply to Executive order Indian reservations. Following that holding this department has not granted any leases covering such land. Permits had been issued by the Interior Department to 16 persons covering land within the Navajo Indian Reservation in Utah and 4 in Arizona. It is understood that some of the permittees have expended considerable sums of money in attempting to develop the land. Provision is made in the bill to allow the permittees to continue prospecting for oil and gas on the land covered by their permits and to grant them leases in the event valuable oil or gas deposits are found. In addition to the applications upon which permits were granted, there were filed approximately four hundred for which no permits were granted. Undoubtedly many of these applications were purely speculative and nothing expended by the applicants in attempted development, and it is not believed that they should be recognized or given any preference right to a lease covering the land for which they applied.

Provision is made that 37½ per cent of the rentals, royalties, and bonuses received will be turned over to the State wherein the land is located, to be expended for construction and maintenance of public roads within the respective reservations where the leased lands are located and public roads contributory thereto and forming a part of the same highway system, or for the support of public schools attended by Indian children, the remainder of the money to be used for the expenses of administration and for the benefit of the Indians. The provision as to roads will be of advantage not only to the Indians and the lessees, but to the public generally. The requirement that any of the money used for educational purposes be expended for support of public schools or other educational institutions attended by Indian children is believed to be fair and just alike to the State and the Indians.

A part, at least, of any funds which may be deposited in the Treasury to the credit of the Indians will be available for appropriation by Congress for payment of cost of administration of their affairs and thus avoid the appropriation of public money for that purpose. Moreover, any remainder may be used, as authorized by Congress from time to time, for the benefit of the Indians in the development of water on their grazing ranges or other needful purposes without incurring the appropriation of public money. It is not, therefore, believed that any of the funds arising from leases should be deposited in the Treasury as miscellaneous receipts.

Early and favorable consideration of the draft is respectfully recommended.

Very truly yours,

HUBERT WORK.

A BILL To authorize oil and gas mining leases upon unallotted lands within Executive order Indian reservations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any Indians or tribe may be leased for oil and gas mining purposes in accordance with the provisions contained in the Act of May 29, 1924 (Forty-third Statutes, page 244).

SEC. 2. That the proceeds from rentals, royalties, or bonuses of oil and gas leases upon land within Executive order Indian reservations or withdrawals shall be distributed as follows: Thirty-seven and one-half per cent shall be paid in lieu of taxes to the State within the boundaries of which the leased lands or deposits are located, upon the condition that the same are to be used by such State, or subdivision thereof, for the construction and maintenance of public roads within the respective reservations in which the leased lands are situated and public roads contributory thereto and forming a part of the same highway system, or for the support of public schools or other public educational institutions attended by Indian children; sixty-two and one-half per cent shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created, and shall draw interest at the rate of four per cent per annum and be available for appropriation by Congress for the expense of administration and for the use and benefit of such Indians.

SEC. 3. That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to allow any applicant to whom a permit to prospect for oil and gas upon lands within an Indian reservation created by Executive order has heretofore been issued in accordance with the provisions of the act of February 25, 1920 (Forty-first Statutes, page 437), to continue prospecting for a period not exceeding two years from the date of the passage of this act on the land described in his permit, under the terms and conditions therein set out, and upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee shall be in compact form, and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of 20 years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided*, That the Secretary shall have the right to reject any or all bids.

GENERAL LEASING ACT

[PUBLIC—No. 146—66TH CONGRESS]

[S. 2775]

AN ACT To promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the act known as the Appalachian forest act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas to municipalities: *Provided*, That the United States reserves the right to extract helium from all gas produced from lands permitted, leased, or otherwise granted under the provisions of this Act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands, it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof: *And provided further*, That citizens of another country, the laws, customs, or regulations of which, deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

COAL

SEC. 2. That the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant: *Provided*, That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider and recognize equitable rights of such occupants or claimants: *Provided further*, That where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this act, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter, the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this act for all or part of the land in his permit: *And provided further*, That no lease of coal under this act shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated: *And provided further*, That no company or corporation operating a common carrier railroad shall be given or hold a permit or lease under the provisions of this act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations, and no such company or corporation shall receive or hold more than one permit or lease for each two hundred miles of its railroad line within the State in which said property is situated, exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad,

and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam: *And provided further*, That nothing herein shall preclude such a railroad of less than two hundred miles in length from securing and holding one permit or lease hereunder.

SEC. 3. That any person, association, or corporation holding a lease of coal lands or coal deposits under this act may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.

SEC. 4. That upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.

SEC. 5. That if, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted under this act may consolidate their leases through the surrender of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands.

SEC. 6. That where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit.

SEC. 7. That for the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That the Secretary of the Interior may, if in his judgment the public interest will be subserved thereby, in lieu of the provision herein contained requiring continuous operation of the mine or mines, provide in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for: *Provided further*, That the Secretary of the Interior may permit suspension of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease can not be operated except at a loss.

SEC. 8. That in order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale coal from the public lands without payment of royalty for the coal mined or the land occupied on such conditions not

inconsistent with this act as in his opinion will safeguard the public interests: *Provided*, That this privilege shall not exceed to any corporations: *Provided further*, That in the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located, upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *And provided further*, That the acquisition or holding of a lease under the preceding sections of this act shall be no bar to the holding of such tract or operation of such mine under said limited license.

PHOSPHATES

SEC. 9. That the Secretary of the Interior is hereby authorized to lease to any applicant qualified under this act any lands belonging to the United States containing deposits of phosphates, under such restrictions and upon such terms as are herein specified, through advertisement, competitive bidding, or such other methods as the Secretary of the Interior may by general regulation adopt.

SEC. 10. That each lease shall be for not to exceed two thousand five hundred and sixty acres of land to be described by the legal subdivisions of the public land surveys, if surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease, in accordance with rules and regulations prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such survey; deposits made to cover expense of surveys shall be deemed appropriated for that purpose; and any excess deposits shall be repaid to the person, association, or corporation making such deposits or their legal representatives: *Provided*, That the land embraced in any one lease shall be in compact form, the length of which shall not exceed two and one-half times its width.

SEC. 11. That for the privilege of mining or extracting the phosphates or phosphate rock covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, which shall be not less than 2 per centum of the gross value of the output of phosphates or phosphate rock at the mine, due and payable at the end of each third month succeeding that of the sale or other disposition of the phosphates or phosphate rock, and an annual rental payable at the date of such lease and annually thereafter on the area covered by such lease at such rate as may be fixed by the Secretary of the Interior prior to offering the lease, which shall be not less than 25 cents per acre for the first year thereafter, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of a minimum annual production, except when operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions shall be made as the Secretary of the Interior shall determine unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That the Secretary of the Interior may permit suspension of operation under such lease for not exceeding twelve months at any one time when market conditions are such that the lease can not be operated except at a loss.

SEC. 12. That any qualified applicant to whom the Secretary of the Interior may grant a lease to develop and extract phosphates, or phosphate rock, under the provisions of this act shall have the right to use so much of the surface of unappropriated and unentered lands, not exceeding forty acres, as may be determined by the Secretary of the Interior to be necessary for the proper prospecting for or development, extraction, treatment, and removal of such mineral deposits.

OIL AND GAS

SEC. 13. That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby: *Provided*, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: *Provided further*, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit.

SEC. 14. That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated

for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the right of renewal as prescribed in section 17 hereof. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, and under such other conditions as are fixed for oil or gas leases in this act, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided*, That the Secretary shall have the right to reject any or all bids.

SEC. 15. That until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

SEC. 16. That all permits and leases of lands containing oil or gas, made or issued under the provisions of this act, shall be subject to the condition that no well shall be drilled within two hundred feet of any of the outer boundaries of the lands so permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or lease, to be enforced through appropriate proceedings in courts of competent jurisdiction.

SEC. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in areas not exceeding six hundred and forty acres and in tracts which shall not exceed in length two and one-half times their width, such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than 12½ per centum in amount or value of the production, and the payment in advance of a rental of not less than \$1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year. Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods. Whenever the average daily production of any oil well shall not exceed ten barrels per day, the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the wells can not be successfully operated upon the royalty fixed in the lease. The provisions of this paragraph shall apply to all oil and gas leases made under this Act.

SEC. 18. That upon relinquishment to the United States, filed in the General Land Office within six months after the approval of this act, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since by the claimant or his predecessor in interest under the preexisting placer mining law to any oil or gas bearing land upon which there has been drilled one or more oil or gas wells to discovery embraced in the Executive order of withdrawal issued September 27, 1900, and not within any naval petroleum reserve, and upon payment as royalty to the United States of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced except oil or gas used for production purposes on the claim, or unavoidably lost, from such land, the claimant, or his successor, if in possession of such land, undisputed by any other claimant prior to July 1, 1919, shall be entitled to a lease thereon from the United States for a period of twenty years, at a royalty of not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Pro-*

vided, That not more than one-half of the area, but in no case to exceed three thousand two hundred acres, within the geologic oil or gas structure of a producing oil or gas field shall be leased to any one claimant under the provision of this section when the area of such geologic oil structure exceeds six hundred and forty acres. Any claimant or his successor, subject to this limitation, shall, however, have the right to select and receive the lease as in this section provided for that portion of his claim or claims equal to, but not in excess of, said one-half of the area of such geologic oil structure, but not more than three thousand two hundred acres.

All such leases shall be made and the amount of royalty to be paid for oil and gas produced, except oil or gas used for production purposes on the claim, or unavoidably lost, after the execution of such lease shall be fixed by the Secretary of the Interior under appropriate rules and regulations: *Provided, however*, That as to all like claims situate within any naval petroleum reserve the producing wells thereon only shall be leased, together with an area of land sufficient for the operation thereof, upon the terms and payment of royalties for past and future production as herein provided for in the leasing of claims. No wells shall be drilled in the land subject to this provision within six hundred and sixty feet of any such leased well without the consent of the lessee: *Provided, however*, That the President may, in his discretion, lease the remainder or any part of any such claim upon which such wells have been drilled, and in the event of such leasing said claimant or his successor shall have a preference right to such lease: *And provided further*, That he may permit the drilling of additional wells by the claimant or his successor within the limited area of six hundred and sixty feet theretofore provided for upon such terms and conditions as he may prescribe.

No claimant for a lease who has been guilty of any fraud or who has knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

Upon the delivery and acceptance of the lease, as in this section provided, all suits brought by the Government affecting such lands may be settled and adjusted in accordance herewith and all moneys impounded in such suits or under the act entitled "An act to amend an act entitled 'An act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest,' approved March 2, 1911," approved August 25, 1914 (Thirty-eighth Statutes at Large, page 708), shall be paid over to the parties entitled thereto. In case of conflicting claimants for leases under this section, the Secretary of the Interior is authorized to grant leases to one or more of them as shall be deemed just. All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation as to area and acreage as is provided for claimant in this section: *Provided*, That no claimant acquiring any interest in such lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum allowed claimant under this section shall secure a lease thereon or any interest therein, but the inhibition of this proviso shall not apply to an exchange of any interest in such lands made prior to the 1st day of January, 1920, which did not increase or reduce the area or acreage held or claimed in excess of said maximum by either party to the exchange: *Provided further*, That no lease or leases under this section shall be granted, nor shall any interest therein, inure to any person, association, or corporation for a greater aggregate area or acreage than the maximum in this section provided for.

SEC. 18a. That whenever the validity of any gas or petroleum placer claim under preexisting law to land embraced in the Executive order of withdrawal issued September 27, 1909, has been or may hereafter be drawn in question on behalf of the United States in any departmental or judicial proceedings, the President is hereby authorized at any time within twelve months after the approval of this act to direct the compromise and settlements of any such controversy upon such terms and conditions as may be agreed upon, to be carried out by an exchange or division of land or division of the proceeds of operation.

SEC. 19. That any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been

made prior to the passage of this act, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of \$250 for each location if application therefor shall be made within six months from the passage of this act shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this act, or where any such person has heretofore made such discovery, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 18 hereof: *Provided*, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than $12\frac{1}{2}$ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however*, That the provisions of this section shall not apply to lands reserved for the use of the Navy: *Provided, however*, That no claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear.

Sec. 20. In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentee, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than $12\frac{1}{2}$ per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 14 hereof.

OIL SHALE

Sec. 21. That the Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this act any deposits of oil shale belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this act, as he may prescribe; that no lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior: *Provided*, That for the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease: *Provided*, That any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation: *Provided, however*, That no claimant for a lease who has been guilty of any fraud

or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section: *Provided further*, That not more than one lease shall be granted under this section to any one person, association, or corporation.

ALASKA OIL PROVISION

SEC. 22. That any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to the passage of this act expended not less than \$250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from the date of this act, or within six months after final denial or withdrawal of application for patent, to a prospecting permit or permits, lease or leases, under this act covering such lands, not exceeding five permits or leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each: *Provided*, That leases in Alaska under this act whether as a result of prospecting permits or otherwise shall be upon such rental and royalties as shall be fixed by the Secretary of the Interior and specified in the lease, and be subject to readjustment at the end of each twenty-year period of the lease: *Provided further*, That for the purpose of encouraging the production of petroleum products in Alaska the Secretary may, in his discretion, waive the payment of any rental or royalty not exceeding the first five years of any lease.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

SODIUM

SEC. 23. That the Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium dissolved in and soluble in water, and accumulated by concentration, in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall be not exceeding two thousand five hundred and sixty acres of land in reasonably compact form: *Provided further*, That the provisions of this section shall not apply to lands in San Bernardino County, California.

SEC. 24. That upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 23 hereof has been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefore the permittee shall be entitled to a lease for one-half of the land embraced in the prospecting permit, at a royalty of not less than one-eighth of the amount or value of the production, to be taken and described by legal subdivisions of the public-land surveys, or if the land be not surveyed by survey executed at the cost of the permittee in accordance with the rules and regulations to be prescribed by the Secretary of the Interior. The permittee shall also have the preference right to lease the remainder of the lands embraced within the limits of his permit at a royalty of not less than one-eighth of the amount or value of the production to be fixed by the Secretary of the Interior. Lands known to contain such valuable deposits as are enumerated in section 23 hereof and not covered by permits or leases, except such lands as are situated in said county of San Bernardino, shall be held subject to lease, and may be leased by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres; all leases to be conditioned upon the payment by the lessee of such royalty of not less than one-eighth of the amount or value of the production as may be fixed in the lease, and the payment in advance of a rental of 50 cents per acre for the first calendar year or fraction thereof and \$1 per acre per annum

thereafter during the continuance of the lease, the rental paid for any one year to be credited on the royalty for that year. Leases may be for indefinite periods, subject to readjustment at the end of each twenty-year period, upon such conditions not inconsistent herewith as may be incorporated in each lease or prescribed in general regulation theretofore issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development, and minimum production, and a lessee under this section may be lessee of the remaining lands in his permit.

SEC. 25. That in addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

GENERAL PROVISIONS APPLICABLE TO COAL, PHOSPHATE, SODIUM, OIL, OIL SHALE,
AND GAS LEASES

SEC. 26. That the Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provision of this act appropriate provisions for its cancellation by him.

SEC. 27. That no person, association, or corporation, except as herein provided, shall take or hold more than one coal, phosphate, or sodium lease during the life of such lease in any one State; no person, association, or corporation shall take or hold, at one time, more than three oil or gas leases granted hereunder in any one State, and not more than one lease within the geologic structure of the same producing oil or gas field; no corporation shall hold any interest as a stockholder of another corporation in more than such number of leases; and no person or corporation shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, which, together with the area embraced in any direct holding of a lease under this act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, for any kind of mineral leased hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee under this act. Any interests held in violation of this act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this act, or the transportation of coal: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That if any of the lands or deposits leased under the provisions of this act shall be subleased, trusted, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of, or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered

into by the lessee, or any agreement or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this act, the lease thereof shall be forfeited by appropriate court proceedings.

Sec. 28. That rights of way through the public lands, including the forest reserves, of the United States are hereby granted for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers: *Provided*, That the Government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this act: *Provided further*, That no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding.

Sec. 29. That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits prescribed in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, That if such reservation is made it shall be so determined before the offering of such lease: *And provided further*, That the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

Sec. 30. That no lease issued under the authority of this act shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under such lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property: a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the

United States, for the prevention of monopoly, and for the safeguarding of the public welfare: *Provided*, That none of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

SEC. 31. That any lease issued under the provisions of this act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this act, of the lease, or of the general regulations promulgated under this act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

SEC. 32 That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act, also to fix and determine the boundary lines of any structure, or oil gas field, for the purposes of this act: *Provided*, That nothing in this act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

SEC. 33. That all statements, representations or reports required by the Secretary of the Interior under this act shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

SEC. 34. That the provisions of this act shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws serving such deposits.

SEC. 35. That 10 per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of this act, excepting those from Alaska, shall be paid into the Treasury of the United States and credited to miscellaneous receipts; for past production 70 per centum, and for future production 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the act of Congress, known as the Reclamation Act, approved June 17, 1902, and for past production 20 per centum, and for future production 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided*, That all moneys which may accrue to the United States under the provisions of this act from lands within the naval petroleum reserves shall be deposited in the Treasury as "Miscellaneous receipts."

SEC. 36. That all royalty accruing to the United States under any oil or gas lease or permit under this act on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this act, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided, however*, That pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secre-

tary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further*, That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

Sec. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled "Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming," approved August 1, 1912 (Thirty-seventh Statutes at Large, page 1346), shall be subject to disposition only in the form and manner provided in this act, except as to valid claims existent at date of passage of this act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

Sec. 38. That, until otherwise provided, the Secretary of the Interior shall be authorized to prescribe fees and commissions to be paid registers and receivers of United States land offices on account of business transacted under the provisions of this act.

Approved, February 25, 1920.

[PUBLIC—No. 158—68TH CONGRESS]

[H. R. 6298]

AN ACT To authorize the leasing for oil and gas mining purposes of unallotted lands on Indian reservations affected by the proviso to section 3 of the act of February 28, 1891.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That unallotted land on Indian reservations other than lands of the Five Civilized Tribes and the Osage Reservation subject to lease for mining purposes for a period of ten years under the proviso to section 3 of the act of February 28, 1891 (Twenty-sixth Statutes at Large, page 795), may be leased at public auction by the Secretary of the Interior, with the consent of the council speaking for such Indians, for oil and gas mining purposes for a period of not to exceed ten years, and as much longer thereafter as oil or gas shall be found in paying quantities, and the terms of any existing oil and gas mining lease may in like manner be amended by extending the term thereof for as long as oil or gas shall be found in paying quantities: *Provided*, That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however*, That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner.

Approved, May 29, 1924.

APPEAL FROM THE GENERAL LAND OFFICE

DEPARTMENT OF THE INTERIOR,
Washington, June 9, 1922.

E. M. Harrison has appealed from the decision of the Commissioner of the General Land Office, of January 14, 1922, in which his application (030647) for a prospecting permit, under section 13 of the act of February 25, 1920 (41 Stat., 437) for a tract of land described by metes and bounds in unsurveyed township 43 south, reservation 22 east, Salt Lake meridian, Salt Lake City land district, Utah, was rejected. The application of Harrison was rejected for the reason that the tract of land included in the application is embraced within lands set apart as a reservation for Indian purposes by Executive order of May 17, 1884.

The decision of the commissioner was doubtless based on the provisions of paragraph 2 of the departmental regulations of March 20, 1920 (47 L. D., 437), which as far as applicable reads:

"Such permits may not include land or deposits in (a) national parks (b) forests created under the act of March 1, 1911 (36 Stat. 961), known as the

Appalachian Forest Reserve act; (c) lands in military or naval reservations; or (d) Indian reservations.

The first section of the act of February 25, 1920, provides:

"That deposits of coal, phosphate, sodium, oil, oil shale, or gas and lands containing such deposits owned by the United States, including those in National Forests, but excluding lands acquired under the act known as the Appalachian Forest act approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this act. * * *

It will be observed that the provisions of the law do not expressly include Indian reservations among the classes of land excepted from its provisions. The scope and meaning of the exception contained in the departmental regulations in the use of the words "Indian reservations" and whether such words include lands such as involved here is of primary importance.

Indian reservations may be created and established for use and occupancy of tribes or bands of Indians by either the following methods: First, by treaty stipulation; second, by virtue of Congressional action; third, by Executive order.

There is a material difference and distinct line of demarcation between Indian reservations created by treaty stipulations, or by virtue of congressional action, and those created by Executive order.

The authority of the Congress of the United States over the tribal relations of Indians has never been questioned and at all times recognized by the courts. Up until the year 1871 the policy of the Federal Government in dealing with the Indian tribes was by means of treaty stipulations. In later years the policy has been adopted of governing the Indians by means of acts of Congress. While the moral obligation has always rested upon Congress to act in good faith in performing the agreements, and stipulations either entered into by treaty or imposed by legislative action, yet the power to abrogate the stipulations and provisions of either treaty or legislative action has been uniformly recognized by the courts.

It must be conceded that stipulations and provisions made in creating a reservation either by treaty or by legislative action, can be disregarded only by the direct action of the Congress of the United States. No power other than Congress can vacate, annul, or set aside the order of establishment of the reservation so created, and provides for the disposition of the lands included therein.

Under the settled doctrine by repeated decisions of the Supreme Court of the United States, the Indians are not recognized as having any title to the lands included in Indian reservations except the mere right of occupancy which Congress has the right at any time to extinguish.

"The right which the Indians held was only that of occupancy, the fee was in the United States subject to that right and to be transferred by them whenever they chose. The right of the United States to make disposition of lands occupied by the Indians has always been recognized from the very foundation of the Government."

Johnson v. McIntosh (8 Wheat. 543); *United States v. Cook* (19 Wall. 591); *Beecher v. Wetherby* (95 U. S. 517); *Lone Wolf v. Hitchcock* (187 U. S. 553); *Spalding v. Chadler* (160 U. S. 395).

Lands included within a reservation for Indian purposes created by Executive order may be restored to the public domain for disposition under the provisions of the law at any time within the discretion of the President of the United States.

The power to divest the Indian of his right of occupancy of the lands within Indian reservations in the first instance is vested with Congress while in the later case it may be exercised by the President. The power to create includes the power to take away and remove the benefits of occupancy of lands included within a reservation.

The treaty of June 1, 1868, included in a reservation and set apart for the use and occupation of the Navajo Tribe of Indians, a tract of land and in which treaty the United States "agrees that no person except those herein authorized so to do * * * shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

The Executive order setting apart a tract of land for Indian purposes and which is used by the Navajo Indians provided:

"It is hereby ordered that the following described lands in the Territories of Arizona and Utah be, and the same are, withheld from sale and settlement and set apart as a reservation for Indian purposes."

Reference to these provisions of the treaty stipulation and the language of the Executive order serves to illustrate the material differences between the two characters of reservations for Indian purposes. In the one the Government made a solemn compact to recognize certain specific rights of the Indian in the enjoyment of his occupancy; in the other, Government speaking by and through the Chief Executive, merely withheld the land from sale and settlement and set apart as a reservation for Indian purposes certain tracts of land.

The land involved is not within the reservation enacted by the treaty of June 1, 1868 (15 Stat. 667), but is embraced within the Executive order of May 17, 1884.

The distinction as to the different characters of Indian reservations is plainly recognized and indicated throughout the legislation of Congress.

Section 3, of the act of February 28, 1891 (26 Stat. 795), provides:

"That where lands are occupied by Indians who have bought and paid for the same and which lands are not needed for farming or agricultural purposes and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians for a period not to exceed 5 years for grazing and 10 years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend subject to the approval of the Secretary of Interior."

In construing this provision, the Assistant Attorney General for the Interior Department in an opinion dated January 11, 1892, said:

"The parties who may lease lands are Indians who have 'bought and paid for' the same. Congress was legislating with reference to those Indians who have under treaty or otherwise become possessors or owners of certain specific tracts or bodies of land by purchase or exchange or surrender of other property in contradistinction to those Indians who are occupying reservations created by Executive order or legislative enactment."

Following this opinion it has since been held and is so provided in the departmental regulations of June 28, 1916, that the act of February 28, 1891, applies to Indian tribal lands but that "lands withdrawn from the public domain by Executive order for the use of the Indians are not subject to lease for mining purposes."

Lands withdrawn by Executive order for Indian purposes, with a view to permitting the occupancy by Indians are not subject to lease under the act of February 28, 1891, by the Indians for mining purposes for the very evident reason that the Indians have no title thereto, and for the further reason that the right of occupancy by virtue of the Executive order may be terminated at any time.

The President, by Executive order, could convey no title to the lands set apart for the use of the Indians. Manifestly neither the minerals nor the right to prospect or explore for the same is in any just sense necessary to the objects for which the reservation was created. The explorations for minerals beneath the surface neither defeats nor impedes the fulfillment of the purposes which actuated the creation of the reservation by Executive order. The United States can not be held to have reserved for Indian purposes the minerals beneath the surface which it had never used for such Indian purposes. To so hold would in effect be a subordination on the part of the Government of its right to authorize the exploration and development of its natural resources.

No just object of the creation of the reservation will be made to suffer by granting permits to explore the land for minerals beneath the surface. There are no treaty rights of the Indians involved, nor any equities growing out of any previous treaty or agreement in this case.

Thus at the date of the passage of the act of February 25, 1920, generally designated the leasing act, there was in existence special legislation providing for the leasing, for mining purposes, of lands bought and paid for by the Indians or included within Indian reservations created by treaty or congressional action.

It is a well settled and uniformly recognized rule of statutory construction, that statute general in its terms, does not repeal by implication the provisions of a former law of special, local, or particular application unless there is some language in the general law or in the course of legislation upon its subject

matter that makes it clearly manifest that the legislative body contemplated and intended a repeal. Neither is a general act to be construed as applying to cases covered by a prior special act upon the same subject. (Lewis's Sutherland Statutory Construction 2d ed., p. 256; *United States v. Nix*, 189 U. S. 199; 36 Cus. 1151.)

None of the provisions contained in the general leasing act indicates any intention on the part of Congress to either directly or by implication affect or repeal the provisions of the act of February 28, 1891, *supra*. Under the application of the rules of statutory construction cited, it is clear that the act of February 25, 1920, did not repeal or modify the provisions of the act of February 29, 1891, and that the provisions of the general leasing act have no application to the lands in Indian reservation created by treaty or by congressional legislation. On the other hand on February 25, 1920, as to lands within reservations created by Executive order for Indian purposes, there existed no legislation authorizing their lease or disposal for mining purposes.

The statutes of lands included within Executive order Indian reservations was undoubtedly fully understood by Congress. Congress is presumed to know the existing statutes and the state of the law with relation to subjects with which they deal. A consideration of the leasing act leads to the inevitable conclusion that Congress acted with full knowledge of the law and facts surrounding the lands owned by the United States.

The passage of the leasing act of February 25, 1920, was enactment into law of a broad and comprehensive plan of general application by which an entire new system respecting the disposition of lands and the deposits of minerals beneath the surface owned by the United States and valuable for certain specified minerals was adopted.

The purpose of the leasing act was to encourage the development of the mineral resources of the country under the principle of permits for exploration and the leasing of the lands owned by the United States.

It will be noted that under the terms of the act of February 25, 1920, *supra*, all lands owned by the United States were included within its provisions, except as to certain lands therein specifically enumerated. Its provisions are not inconsistent with nor repugnant to the provisions of the act of February 28, 1891, *supra*, in which the Indians are given the right to lease lands bought and paid for by them and not owned by the United States.

The lands within reservations created by Executive order are without question lands "owned by the United States." The withdrawal in nowise affects the title or ownership of the United States in the land withdrawn. Such lands are not expressly excepted from the provision of the leasing act, which act does make exception of lands acquired under the Appalachian Forest act, those in national forests, or lands withdrawn for military or naval uses or purposes.

In determining the intention of Congress in view of the status of the existing law and all the conditions surrounding these lands, the maxim "*expressio unius est exclusio alterius*" is applicable. Congress, by having expressly excepted certain classes of withdrawn and reserved lands, the plain implication is that no further exception was intended. The leasing act has been applied to lands within other forms of withdrawal, including those under the reclamation act and the Federal water power act. As to the latter, see opinion of the Solicitor for the Interior Department, September 30, 1920 (48 L. D.—).

To hold otherwise would result in defeating the very purpose of the act of February 25, 1920, for the Indians can not lease the lands, as their right to lease is specifically limited to lands bought and paid for, and if they are not subject to lease under the general provisions of the leasing act, then there is no other form of disposition permissible and further legislation for the development of mineral resources upon this character of lands owned by the United States would be required. In the view of the department no such condition was contemplated by Congress in the passage of the leasing act. For the reasons herein set forth it is the opinion of the department that the term "Indian reservations" as used in the departmental regulations of March 20, 1920, should not be construed to include lands included within Executive order Indian Reservations, withdrawn by Executive order for Indian purposes and it is the further view of the department and is so held that the mineral deposits beneath the surface of such lands as are specifically enumerated in the provisions of the act of February 25, 1920, are subject to lease by the department under the provisions of such act.

The provisions of the act of February 25, 1920, governing the method of and in providing for final disposition of the profits, if any, which may accrue from rents and royalties by reason of the discovery of valuable minerals in pursuance of operations conducted under the terms of the permit to prospect or lease to extract the minerals from or beneath the surface of any of the lands included in such Indian reservations created by Executive order, has no force or effect in the determination of the question here involved.

With regard to the final disposition of rentals and royalties which may accrue from this or any other permits or leases which may be granted by the department in this or any other Executive order reservation, it is only necessary to state that there is pending before the Congress of the United States with the favorable recommendation of the Department of the Interior, a resolution proposing to grant and devote one-third of any such proceeds to the use and benefit of the particular Indians interested, one-third of such proceeds for the use and benefit of the reclamation fund of the Government in aid of reclaiming arid land and one-third of such proceeds to the State in which any such land is situated. In the event that any rentals or royalties shall accrue to the Government of the United States for any permits or leases granted by the Department of the Interior prior to the enactment of legislation providing for the final disposition of such rents and royalties, the Department of the Interior will, with the consent of the Secretary of the Treasury, order and direct that such rentals and royalties so accruing be placed in the Treasury of the United States in a special fund subject to such disposition as shall be finally determined by the Congress of the United States.

The commissioner also stated in his decision—

"It is further noted that the application, although describing the lands by metes and bounds and courses and distances, does not locate the lands by cardinal directions so as to be readily conformable to legal subdivisions, when surveyed, as is required by the act prior to the granting of a lease. This objection, however, needs no further consideration at this time, as the lands are not subject to disposal."

The requirement referred to by the commissioner is that made in section 14, of the act:

"The area to be selected by the permittee shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with the rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys."

While the law and regulations do not expressly require that the lands for which section 13 permits are sought shall be located with east and west and north and south boundary lines, it is evident from the provisions of section 4, requiring actual conformation before lease, that the law intended that the lands should be located in general conformity with the system of public-land surveys. The applicant will, therefore, be required to amend his application in this respect.

The decision of the commissioner is reversed, the case closed, and the record returned to the General Land Office for appropriate action.

ALBERT B. FALL, *Secretary.*

United States District Court, District of Utah. United States of America, plaintiff, v. Ed McMahon Harrison, defendant. No. 8288, E.

(At the conclusion of the testimony and argument the court said:)

This case, gentlemen, as indicated a moment ago, seems to have been brought by the Attorney General to cancel permits granted by the Secretary of the Interior pursuant to the leasing act, on the ground, not that the Secretary of the Interior did not have authority to issue permits under the act, but that he had no authority to issue permits upon this particular piece of land. The land, it is claimed, was set apart by Executive order for Indian purposes, but it does not appear that any Indian rights have attached. It is as much in the future, so far as the Indians are concerned, as it was on the 17th day of May, 1884, the day the order was made. The title, both legal

and equitable, continued and was in the Government at the time this permit was issued. That being true, the Executive order could have been set aside at any time, could be set aside yet by the Executive.

My impression is, gentlemen, that the Secretary of the Interior could have set it aside under the authorities; and especially so in view of the leasing act wherein he is specifically given authority under certain rules and regulations to issue permits upon Government land.

The equities are all in favor of the defendant. The claim of the Government is, as I view it, highly technical in that no substantial rights with respect to the Government or anyone else are alleged or claimed. There is no question of fraud here; no claim that these lands have been occupied by Indians or can possibly be occupied by Indians in any practical way. It is a desert, unfit for occupancy by any human being.

The right of the Government to insist upon and enforce what in effect is a forfeiture is too doubtful in my mind for the court to adopt that view and deprive the defendants of possible benefits to be derived from the large expenditures which they have made upon this ground in good faith. I shall hold against the contention of the Government, and I will add also in all these other cases as well, if the facts are the same.

I can see no advantage to anyone for the court to take this matter under advisement and write an elaborate opinion upon it or an opinion of any sort for that matter, especially in view of the fact that counsel for the Government and also for the defendants, in part, are nonresidents. Being here, gentlemen, and knowing what the decision is, you can perhaps arrange for a speedy appeal of the case and review by the appellate court.

Mr. WILLIAMS. May I consider that a decree entered in this case dismissing the bill?

The COURT. That will be the end of this case, yes; decree will be entered dismissing the bill; that will be the decree.

Ordered filed and made a part of the record.

TILLMAN D. JOHNSON, *District Judge*.

Filed in United States District Court, District of Utah, April 27, 1925. John W. Christy, Clerk.

In the United States District Court for the District of Utah. United States of America, Plaintiff, *v.* Ed McMahon Harrison, Midwest Oil Co. and Southwest Oil Co., Defendants. No. 8288 E. Statement of Evidence taken before Hon. Tillman D. Johnson, United States District Judge at Salt Lake City. March 3, 1925

The Government objected to the offering of evidence upon the ground that it had moved that the cause be set for hearing on bill and answer by which all affirmative matter in the answer would be admitted. The court overruled the objection and the Government excepted. Whereupon Matthew Stiffer, called as a witness for the defendants, testified as follows:

His present business is that of exploring for oil. He is employed by the Southwest Oil Co., San Juan Oil Development Co., and the Midwest Oil Co. He is in charge of operations for the Southwest Oil Co. and was superintendent of field operations in connection with the exploration of the Boundary Butte structure. The first time he went to the lands covered by the Ed Harrison permit was December 17, 1922, at which time he went for the purpose of investigating and viewing the country with a view to constructing roads and employing men to invade an uninhabited country. Witness produced a blue print of the region in which the Harrison permit is located [map offered in evidence but omitted herefrom]. The Ed Harrison permit is identified on the map by the number 030647. At the time of his first visit to that part of the country the nearest road to the land was 45 miles away, the land being about 17 miles from the end of a trail. The road ended at Morris store, which is about 4 miles east of the west boundary of New Mexico. The road from the Shiprock Agency to the Morris store was a good deal as nature had left it, except it had been beaten down. The arroyas had been whittled off so that people were able to struggle over them, but heavily loaded trucks could not be taken over the road. It was called a road from Farmington to the

Shiprock Agency, but the bridges were in bad shape and the fills were cup up and needed lots of repairing before the trucks could go over them.

There was no railroad nearer the land than the end of the road at Farmington. The nearest telegraph line that could be depended upon was at Farmington, but the Government had a line that was in service about half the time from Farmington to Shiprock. At the beginning of the witness's operations he put two men out for about four days for the purpose of repairing the Government's telephone line. He next returned to the country in January 14 or 15, 1923. He arrived at Dolores and began to assemble the desert rats and men that were capable of going into this uninhabited country. He was in complete control of operation that proceeded in that district and he represented the Midwest Oil Co. He picked a man of about 20 years' experience as a prospector and miner in the desert as his assistant. He had a surveyor, 2 chainmen, brought from Denver; he had 3 miners, men of experience in the country, and a cook; all told, 11 men in the party. He had a farmer experienced at road work and with him an experienced miner and 2 assistants, men who had worked building roads throughout the country. Had four 1,600-pound horses, a 3½-inch wagon road plow, picks, shovels, powder caps and fuse—everything that was necessary to attack an absolutely uninhabited country and construct a road and at the same time commissary his men. He had two 2-ton Elite trucks. They started out from Shiprock in the morning and made 29 miles over the Government road and over the trail. At numbers of places they had to tie ropes to the tops of the trucks in order to keep them from falling over. The trucks were about half loaded. It was impossible to take a minimum load even over the road. They finally succeeded in getting within about 5 miles of where the wells were subsequently drilled. During the next month or six weeks he established a temporary camp at the end of the line and began to prospect for water and for coal and for an available road site to the top of the structure. There was no water on the Harrison permit. The nearest water was San Juan River, 19 miles away, and the Tees Nas Pas Spring, which was 23 miles away. As soon as they were able to select a route through this desert the first crew they put on was 10 Indians, trenching and bringing down brush so that they could make the return trip to the camp with a water wagon. He finally built up the crew of 10 Indians to possibly 65. He had them working continuously until about the middle of April. There were about 17 miles of actual desert from the end of the Casira Mountain.

The character of the country over which they took the road was loose sand. It could not be called sand because it was so fine, wind-blown material, much finer than sand, it being impossible to drive a road over it. There was no vegetation in the country at all excepting black brush, which just manages to keep its head above the desert, anywhere from 8 to 16 inches. There are no leaves on this bush. They would dig a trench where each wheel track would come about 6 inches deep and 18 inches wide. The Indians would go out and gather up the black brush or weeds or anything that could be picked up by way of vegetation that was possible and filled the trench with it. It would be tramped in with the foot and then shale would be hauled from the shale exposures from a mile and a half to four miles to cover up this vegetation and keep the wind from blowing it away. In that manner the road was constructed. There was about 4½ miles of such road. They did all kinds of road work, having to shoot off points back on the mesa and fill up holes continuously, the country being so soft that trucks and even the roadster that witness used would make a small cut, and on account of there being no foundation the second who came over would cut out a hole 8 to 8 inches deep, and if a loaded truck passed over it, unless well under motion, it was hung up. The road had to be patrolled continuously, watching these holes and keeping them built up. They were also exposed to wind and rains. In the early spring they were continually fighting the sand which the wind would blow across the road. It had to be shoveled off continuously. In an hour's time it would blow so it had to be shoveled off. When those storms were on, the truck drivers ran two trucks together always. It would have been childish to have attempted to send a loaded truck over the road. They would take an Indian or two with them to shovel off the sand and assist the truck drivers. Witness got up half a dozen different mornings and found a mile of his

road gone and where the road had been there would be an arroya in the sand 5 or 6 to 20 feet wide and from 3 or 4 to 20 feet deep, half a mile long. As soon as he was able to extend his operations, they put a road from the temporary camp to the top of the structure on the Harrison permit, constructing first a cookhouse and a bunk house. Later on, as road conditions were improved so that it was possible to get to the top of the hill with men and roads, they brought in some lumber, a mill, and, of course camp facilities to take care of the men he expected to use in drilling operations. Witness produced three photographs portraying the conditions around the permanent camp which were offered in evidence but omitted here.

The country is of bare rock; where it is not bare rock it consists of wind-blown sand. They found no Indians in occupation of the land. There was no water on it. No pasture grass. There was not enough humus in the soil in 10 miles of the Harrison permit to raise one sagebrush. There was no vegetation that would live, except when two or three rainstorms came together there is a sort of Russian thistle, about the size of the crown of an ordinary man's hat. When the road was constructed he assembled drilling tools and rig and got ready to drill a well as fast as possible. The well was started about the middle of May. The first operations consisted in digging what was called a cellar, a hole 10 feet square, 20 feet deep. At the location of that well it was solid rock. It required about 14 days to cut out the hole, with all available men possible to do the drilling, and as many Indians as could conveniently work around and carry off the waste rock. The hole was started with a 20-inch bit, carried down 20 feet, then they drew their bits in to go inside this 20-inch conductor, so that they could introduce a 15½-inch casing which was carried to a depth of 436 feet and 8 inches. The size of the casing used was 12½ inches, that was carried a total depth of 1,108 feet. On account of the formation being bad they had trouble with the hole from the 870-foot point, and the hole had to be abandoned, when the rig was moved 40 feet to the west, where it was practically a repetition of the first work, but they went down to a total depth of 1,569 feet, where they encountered what the geologists call the Shinarump, which is a sort of a conglomerate and sand in which they encountered a nice showing of oil. To test the quantity they started to bale out the hole and after the second baling water commenced to come in. The oil found was about 42 to 44 gravity, with a paraffin base. The first showing they got would make the well produce about 50 to 70 barrels a day, but the second and third day's baling developed that the production would be 17 to 30 barrels. Oil was discovered on March 5, 1924. The well settled to a production of 19 barrels of oil and about 57 barrels of water per day. At the beginning of operations witness secured water from Tees Nas Pas mesa. Witness produced a photograph showing their water outfit of which they had two. [Photograph offered in evidence but omitted here.] They needed a minimum of 100 barrels of water per day. Witness was pretty nearly put in the insane asylum running up and down the country for water and fuel.

- From information he had been able to secure from old timers he learned that a white man going through that country some 30 years previous knew of a spring about 5½ miles from his permanent camp. He followed up this information by interrogating the Indians and learned that there used to be a nice stream of water coming out of the rocks covered by wind-blown sand. They went and dug it out with teams and scrapers and made an excavation, put in some cement, made a basin and established a pump, laid 5 miles of pump or water line, but the lift from this point to the scene of operations was too heavy for a reasonably sized pump, so they put in a booster station and had a minimum water supply from that point. About 7 or 8 days after he had got it installed nicely, a rainstorm came along and flooded the bare rock on the south side of the structure and took it all down the creek. Four days after the rain a pumper came up and reported that it had gone to the San Juan River, where, in the morning of the fourth day, they found an exposure of about 3 or 4 inches of the flywheel of the engine 200 feet down the creek. They dug it out and reinstalled the plant in operation later. The water in the tanks would evaporate about 8 inches a day. At the beginning of the prospecting, witness started men in every direction to see if it was possible to develop or find some coal. He found that there wasn't any coal closer than the exposure in the eastern part of New Mexico.

which was 37 miles by actual measurement from the scene of his operations. They ran a drift in a workable entry, on account of the thinness of the vein and the extensive operations that they were going to carry on. While witness had the men there he ran the entrance about about 160 feet, and made a regular coal mine out of it. The seam is about 29 to 32 inches in thickness and about 65 per cent of the material taken out from the entry was dead. The entry had to be large enough to timber it. Wheelbarrows had to be used to wheel the stuff out, Indians being brought in for that purpose. The coal used was a fair quality of bituminous coal, not an extra good steam coal, but it was the usual grade of coal that is found in the Dakota sandstone throughout the Southwest. It was transported to his operations by natives. To begin with they were paid \$10 a ton, but witness found the Indians could not make any money at that and raised the price to \$12.50 per ton. When the witness last saw the well it was in no condition to be taken deeper, the trouble being that the casing had broken. The material used there is not worth hauling back. The cost of transporting the material back would be as much as the cost of it.

On cross-examination this witness testified that about five or six hundred barrels had been taken out of the well. The well was never a flowing well. The oil was taken out with a baler at first and later a pump was installed. The oil is a high gravity oil but low in quantity.

On redirect examination this witness testified that the oil taken from the well was used to make steam to pump the well with; that is, the greater part of it was. A small quantity was sold for additional prospective work that was carried on in May, June, and July, 1924.

Andrew D. Aitken, called as a witness for the defendant, testified:

He is president of the Southwest Oil Co. and vice president of the Midwest Oil Co. The Southwest Oil Co. was incorporated in April, 1923, and he became president about May 7, 1923. He has been vice president of the Midwest Oil Co. for at least three or four years. He is familiar with the account books and records of the Southwest Oil Co. He has made a general statement of the expenditures of that company in connection with the work that has been testified to by Mr. Stiffler.

(This statement offered in evidence as defendant's Exhibit 6, is as follows:)

Total drilling and development expenditures of the Southwest Oil Co. in connection with permit, Salt Lake 034647, segregated by months

1923		1924	
January -----	\$41,321.83	January -----	\$11,511.43
February -----	4,455.14	February -----	6,479.61
March -----	19,922.59	March -----	11,907.12
April -----	7,358.70	April -----	5,049.29
May -----	10,131.15	May -----	2,594.14
June -----	30,449.98	June -----	4,765.37
July -----	3,106.09	July -----	1,558.95
August -----	9,210.56	August -----	880.94
September -----	9,941.99	September -----	464.84
October -----	8,446.85	October -----	10,110.71
November -----	6,961.49	November -----	109.31
December -----	12,630.02		
Total, 1923 -----	163,936.39	Total, 1924 -----	41,853.39
		Grand total -----	205,789.78

The figures show a true and accurate account of the expenditures of the Southwest Oil Co. in prosecuting the development work on the Ed Harrison permit. The figures in italics show the material disposed of to other companies in that district and indicates a credit. The Ed Harrison permit was purchased from the Harrison people in October, 1922, for a consideration of \$15,000. Harrison still retains an overriding royalty so far as witness knows. The Southwest Oil Co. acquired its interest in the permit right after the organization of the Southwest Oil Co. in April, 1923. The total amount of expenditures shown by Exhibit 6 is \$205,789.78, of which amount \$78,578.13 was spent for equipment, and for development, \$127,211.65. Witness visited

the Harrison permit in April and May, 1924, after oil was discovered. The country is desert, a very desolate region, very remote from railroad or civilization. The distances given by M. Stiffler are approximately correct. The Harrison permit is on the top of the structure and is a barren waste, there being no water, practically no vegetation; could not find even any signs of animal or bird life; no snakes, but witness saw some insects.

On cross-examination this witness testified that the Southwest Oil Co. is owned by the Midwest Oil Co. Probably a few hundred barrels of oil taken from the well were disposed of to others. Counsel for the defendant wants it understood that the approved assignments from Harrison to the Midwest Oil Co. and from the Midwest Oil Co. to the Southwest Oil Co. would be introduced unless they are already in the record, having been offered in the injunction proceedings.

It is hereby stipulated that the foregoing statement is a full and correct statement of all the evidence necessary to a determination of this cause on appeal.

Solicitor for the Plaintiff.

Solicitor for Defendants.

The foregoing statement of evidence is hereby settled, allowed, and approved this _____ day of _____, 1925.

United States District Judge.

[S. 876, Sixty-eighth Congress, second session]

AN ACT To provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, from unallotted lands in Executive order Indian reservations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received under the provisions of the act of Congress approved February 25, 1920 (Forty-first Statutes at Large, page 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," from bonuses, rentals, and royalties in connection with unallotted lands in Indian reservations not affected by the proviso in section 3 of the act of Congress approved February 28, 1891 (Twenty-sixth Statutes at Large, page 795), shall be deposited in the Treasury of the United States to the credit of the particular tribe of Indians for whose benefit the reservation was created and shall draw interest at the rate of 4 per centum per annum. Such moneys shall be available for appropriation by Congress for the expense of administration and for the use and benefit of such Indians.

That the provisions of said act, approved February 25, 1920, shall apply to unallotted lands within the Indian reservations except that such lands may only be leased and patents shall not be issued for the same.

That the production of minerals on said lands may be taxed by the State wherein the same are produced in all respects the same as minerals produced on privately owned lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid from out of the tribal funds in the Treasury the tax so assessed: *Provided*, That such tax shall not become a lien or charge of any kind or character against the land or other property of such Indians.

Sec. 2. That there is hereby authorized an appropriation of \$15,000 from the money on deposit in the Treasury to the credit of the Navajo Tribe of Indians derived from bonuses on oil and gas leases, and from oil and gas royalties for expenditure, in the discretion of the Secretary of the Interior, for necessary expenses in connection with the supervision of the development and operation of the oil and gas industry on the Navajo Indian Reservation in Arizona and New Mexico.

House Report, No. 1254, Sixty-eighth Congress, second session

DISPOSITION OF BONUSES, RENTALS, AND ROYALTIES
FROM UNALLOTTED INDIAN LANDSJANUARY 19, 1925.—Committed to the Committee of the Whole House on the
state of the Union and ordered to be printedMr. HAYDEN, from the Committee on Indian Affairs, submitted
the following

REPORT.

[To accompany S. 876]

The Committee on Indian Affairs, to whom was referred S. 876, to provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, from unallotted lands in Executive order Indian reservations, and for other purposes, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

Page 2, after line 8, add the following:

That the provisions of said act, approved February 25, 1920, shall apply to unallotted lands within Indian reservations except that such lands may only be leased and patents shall not be issued for the same.

That the production of minerals on said lands may be taxed by the State wherein the same are produced in all respects the same as minerals produced on privately owned lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid from out of the tribal funds in the Treasury the tax so assessed: *Provided*, That such tax shall not become a lien or charge of any kind or character against the land or other property of such Indians.

SEC. 2. That there is hereby authorized an appropriation of \$15,000 from the money on deposit in the Treasury to the credit of the Navajo Tribe of Indians derived from bonuses on oil and gas leases and from oil and gas royalties for expenditure, in the discretion of the Secretary of the Interior, for necessary expenses in connection with the supervision of the development and operation of the oil and gas industry on the Navajo Indian Reservation in Arizona and New Mexico.

The enactment of the bill as it passed the Senate was recommended in the following letter from the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
Washington, December 6, 1923.

HON. SELDEN P. SPENCER,
*Chairman Committee on Indian Affairs,
United States Senate.*

MY DEAR SENATOR SPENCER: The act of February 25, 1920 (41 Stat. L. 437), authorizing the mining of coal, phosphate, oil, shale, gas, and sodium on the public domain.

There were excluded from the provisions of the act "lands acquired under the act known as the Appalachian Forest act, approved March 1, 1911 (36

Stat. 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided."

Prior to the passage of this act there was no provision of law whereby unallotted lands on Indian reservations created by Executive order might be leased for the purpose of mining the minerals named therein.

A number of applications for prospecting permits covering lands included within Indian reservations created by Executive order were filed with this department and my predecessor, Secretary Fall, ruled that the act applied to such reservations for the reason that the fee title to such lands was in the United States, the reservations being merely set aside for the use and occupancy of the Indians and might be restored by the President at any time to the public domain; also, that the act of February 25, 1920, in specifying the classes of public lands not subject thereto failed to mention Executive order Indian reservations. He therefore directed that applications for permits on such reservations be given consideration, but that any funds received from the leasing of the land be withheld pending legislation from Congress as to its disposal.

Congress has heretofore recognized the right of the Indians occupying Executive order Indian reservations to moneys arising from the leasing of their lands. Section 24 of the Indian appropriation act of May 18, 1916 (39 Stat. L. 123-155), authorized the leasing for mining purposes of unallotted lands on the diminished Spokane Indian Reservation, in Washington, and provided that the proceeds arising therefrom should be paid into the Spokane tribal fund.

Section 26 of the act of June 30, 1919 (41 Stat. L. 3-31), authorized the leasing of unallotted lands on Indian reservations within the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming for the purpose of mining metalliferous minerals and provided that the money arising therefrom "shall be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the reservation where the leased land is located." Many of the reservations affected by this act were created by Executive order.

By section 7 of the act of June 25, 1910 (36 Stat. L. 855-857), Congress recognized the right of the Indians of a reservation to the proceeds of timber cut from their unallotted lands, no distinction being made between reservations created by treaty or by Executive order.

Congress has repeatedly recognized the right of Indians living on Executive order Indian reservations to the proceeds of the sale of surplus land of such reservations. Such legislation has been enacted affecting Indian reservations in Arizona, California, Colorado, Idaho, Nevada, North Dakota, Oklahoma, Utah, and Washington.

Section 35 of the act of February 25, 1920, provides that the proceeds arising from leases shall be divided in certain proportions among the United States, the State in which the land is located, and the reclamation fund. None of the money arising under this act from leases on Executive order Indian reservations can therefore be used for the benefit of the Indians occupying the reservation.

To remedy this defect and to recognize the right of the Indians to the proceeds arising from their reservation lands, a draft of a bill has been prepared providing that the moneys arising from leases of Executive order Indian reservation lands under the act of February 25, 1920, shall be deposited in the Treasury to the credit of the tribe for whose benefit the reservation was created, such moneys to be subject to appropriation by Congress for expense of administration and for the use and benefit of the Indians.

It is recommended that early and favorable consideration be given to the bill.

Very truly yours,

HUBERT WORK, *Secretary*.

Shortly after the passage of the general leasing act of February 25, 1920, a bill was introduced in the House of Representatives applying the leasing provisions of that act to unallotted lands on Indian reservations, upon which the then Secretary of the Interior submitted the following report:

DEPARTMENT OF THE INTERIOR,
Washington, December 23, 1920.

MY DEAR MR. SNYDER: I am in receipt of your letter inclosing for report a copy of H. R. 13851, a bill to authorize mining for nonmetalliferous minerals on Indian reservations.

Authority was granted in section 3 of the act of February 28, 1891 (26 Stat. L. 795), for leasing lands within treaty Indian reservations, but there is no authority under existing law for leasing unallotted land on Indian reservations created by Executive order or legislative enactment for farming, grazing, mining, or business purposes, except under section 26 of the Indian appropriation act approved June 30, 1919, which authorizes the leasing of unallotted land on Indian reservations in several States for the purpose of mining metalliferous minerals.

It is reported that there are deposits of asbestos on the Apache Reservation in Arizona and that part of the Navajo Indian Reservation is underlain with coal. There have also been reports to the effect that on some of the reservations not subject to lease under existing authority there is oil and gas.

Many applications for leases on unallotted land on various reservations have been received from time to time, and I believe it would be to the advantage of both the Indians and the public generally to authorize the leasing of unallotted land on all Indian reservations. The resources of the reservations would be developed and the Indians would benefit by reason of royalties and rentals and thus need less financial aid from the Government.

In view of the fact that many requests are being received for leases on unallotted lands not subject to lease under existing authority it is hoped that early and favorable consideration will be given the proposed legislation by your committee and the Congress.

Cordially yours,

JOHN BARTON PAYNE, *Secretary.*

HON. HOMER P. SNYDER,
*Chairman Committee on Indian Affairs,
House of Representatives.*

The proviso to section 3 of the act of Congress approved February 28, 1891 (26 Stat. L., p. 795), to which reference is made in the bill, is as follows:

That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council, speaking for such Indians, for a period not to exceed five years for grazing or ten years for mining purposes, in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.

The second provision in the amendment recommended by your committee is based upon a proviso to section 26 of the Indian appropriation act approved March 3, 1921 (41 Stat. L., p. 1249), relating to the lands of the Quapaw Indians of Oklahoma, which is as follows:

And provided further, That the production of minerals on said lands may be taxed by the State of Oklahoma in all respects the same as that produced on unrestricted lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid from out of the individual Indian funds held under his supervision, belonging to the Indian owner of the land, the tax so assessed against the royalty interests of the respective Indian owner in such production: *Provided, however,* That such tax shall not become a lien or charge of any kind or character against the land or other property of said Indian owner.

Another precedent for the payment of a State tax on minerals produced on Indian lands is found in section 5 of the "Act to amend section 3 of the act of Congress of June 28, 1906, entitled 'An act

for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes" (41 Stat. L., p. 1250) which reads:

SEC. 5. That the State of Oklahoma is authorized from and after the passage of this act to levy and collect a gross production tax upon all oil and gas produced in Osage County, Okla., and all taxes so collected shall be paid and distributed, and in lieu of all other State and county taxes levied upon the production of oil and gas as provided by the laws of Oklahoma, the Secretary of the Interior is hereby authorized and directed to pay, through the proper officers of the Osage Agency, to the State of Oklahoma, from the amount received by the Osage Tribe of Indians as royalties from production of oil and gas, the per cent levied as gross production tax, to be distributed as provided by the laws of Oklahoma: * * *

The following letter from the Commissioner of Indian Affairs also refers to the taxation of oil, gas, and other minerals produced on Indian lands:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 29, 1924.

MY DEAR MR. HAYDEN: Receipt is acknowledged of your letter of January 23, 1924, referring to H. R. 2886 and asking to be advised as to the provisions of law relative to the taxation of oil and gas products on untaxed Indian lands in the State of Oklahoma; also, relative to the taxation of lead and zinc mines on the Quapaw Reservation.

The act of March 3, 1921 (41 Stat. L. 1249), extended until April 7, 1946, the reservation to the Osage Tribe of all minerals covered by their lands. Section 5 authorizes the State of Oklahoma to levy and collect a gross production tax upon all oil and gas produced in Osage County, Okla., "in lieu of all other State and county taxes levied upon the production of oil and gas as provided by the laws of Oklahoma," the Secretary of the Interior to pay to the State the proportion assessed against the Osage Tribe from the amount received as royalties on oil and gas.

The gross production tax in Oklahoma at present is 3 per cent. In addition to this amount the act provides for the payment to Osage County, Okla., of an additional 1 per cent of the amount received by the Osage Tribe as royalties to be used by the county for the purpose of building and maintaining roads and bridges therein.

Section 26 of the act of March 3, 1921 (41 Stat. L., 1225-1249), provides for continuing the restrictions against alienation for an additional period of 25 years covering certain Quapaw allotments, and makes the production of minerals on such lands subject to taxation by the State of Oklahoma the same as production on unrestricted lands, the Secretary of the Interior being authorized to pay such production tax from funds under his supervision belonging to the individual Indian owner of the land.

If it is considered advisable to provide for a production tax on minerals produced from Executive Order Indian Reservations to be paid to the State in which the land is located, it is suggested that the Secretary of the Interior be authorized and directed to pay such tax from the royalties on production paid in and covered into the Treasury to the credit of the Indians occupying the reservation.

Cordially yours,

CHAS. H. BURKE, *Commissioner.*

HON. CARL HAYDEN,
House of Representatives.

Section 2 of the amendment to the bill is recommended by your committee in lieu of the bill S. 1653, which passed the Senate on December 30, 1924, and which reads as follows:

AN ACT Authorizing the expenditure for certain purposes of receipts from oil and gas on the Navajo Indian Reservation in Arizona and New Mexico

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any moneys derived from bonuses on oil and gas leases, and from oil and gas royalties, on the Navajo Indian Reservation be, and they are hereby, made available for expenditure, in the

discretion of the Secretary of the Interior, for necessary expenses in connection with the supervision of the development and operation of the oil and gas industry on said reservation and for the support, civilization, and education of the Navajo Indians in Arizona and New Mexico.

The following letters from the Secretary of the Interior and the Commissioner of Indian Affairs explain the necessity for this legislation:

DEPARTMENT OF THE INTERIOR,
Washington, December 17, 1923.

HON. JOHN W. HARRELD,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR MR. HARRELD: I have the honor to inclose herewith a draft of a bill authorizing the expenditure of receipts from oil and gas on the Navajo Indian Reservation for expenses incident to the supervision of oil and gas mining leases thereon, and for the civilization and education of the Navajo Indians. It is respectfully recommended that the proposed legislation receive the favorable consideration of your committee.

Recently oil has been discovered on the reservation in San Juan County, N. Mex., and on October 15, 1923, in accordance with regulations prescribed by this department, a public auction sale of oil and gas leases was held at Santa Fe, N. Mex., and as a result four tracts were sold as exploratory leases. These leases approximated collectively 16,000 acres. Leases on nine smaller tracts of about 640 acres each were also sold. There are yet thousands of acres which may be valuable for oil and gas on the reservation. No one knows at this time just how great an oil field may develop in the Navajo country, but the latest report from the field as to quantity and quality of oil discovered is highly encouraging.

Under the Indian appropriation act of March 3, 1883 (22 Stat. L. 582-590), the proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation (except those of the Five Civilized Tribes), and not the result of the labor of any of such tribe, are covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe. Authority from Congress is necessary before the proceeds can be used for any purpose.

It is desired in the interests of the tribe to have the lands of the Navajo Indians developed for oil and gas mining purposes. Development work is just beginning and there are no funds available which may be used in leasing lands from time to time and in supervising development work as it proceeds. Since the Indians will benefit from any leases made and from any development, it is believed no more than fair and just that a part of the funds received from leases should be used in paying expenses of making and supervising them, and the remainder to be used for the benefit of the Indians.

Very truly yours,

HUBERT WORK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 26, 1924.

MY DEAR MR. HAYDEN: This acknowledges receipt of your letter of January 25, 1924, inclosing a copy of H. R. 4802, a bill authorizing the expenditure for certain purposes of receipts from oil and gas on the Navajo Indian Reservation in Arizona and New Mexico.

The proposed legislation is intended to provide for funds for the development of the oil situation on the treaty portion of the reservation.

On October 15, 1923, a public auction sale of leases was held, at which time approximately 21,500 acres were sold; and a bonus of \$87,600 was realized, provided all the successful bidders complete their offers. However, of the 13 bids obtained, 6 leases have been approved, and a total of \$72,100 in bonus money has been received. Only a small bonus was offered in connection with those leases, which are as yet incomplete, and as the successful bidders have been given until February 1, 1924, to complete their contracts it is not known at present whether all the entire bonus of \$87,600 will be received.

Approximately \$3,500 in advance royalty has been received; and in addition to the amounts shown above, \$9,840 as advance rentals has been received by the superintendent of the San Juan (Navajo) Agency from the Midwest Refining Co., which has a lease, approved November 4, 1921, on 4,800 acres of treaty land. No royalty money has yet been received from these leases.

It will not be possible to say how much money will be needed for necessary expenses of supervision and development between now and June 30, 1925, but it is estimated that it will require at least \$15,000.

There is now in charge of this work a commissioner to the Navajo Tribe, who has one clerk, and possibly an additional clerk will be required. Their salaries and the commissioner's traveling expenses, including automobile maintenance, his office, and office supplies must be provided.

The lands, or most of them, are unsurveyed, and it has been necessary so far to establish by protracted surveys the boundaries of the leases in order to locate them on the ground. It is also vitally important to have a geological survey of the reservation, or those portions at least where oil and gas are expected to be found.

The advertising and selling features of a public auction sale are to be considered. As you know, the reservation covers a large area, and travel and communication are difficult and expensive. Up to the present time the matter of proving the Navajo Reservation as an oil and gas bearing field is in the experimental stage, and no concrete figures can be given of the costs. The items above referred to are, however, cited as a basis for the estimate of \$15,000 to cover the necessary expenses of the supervision of the development and operation of the oil and gas industry on the reservation during the next 17 months.

Cordially yours,

CHAS. H. BURKE,
Commissioner.

HON. CARL HAYDEN,
House of Representatives.

As stated by the Secretary of the Interior in his report, dated December 6, 1923, on this bill, Albert B. Fall, the then Secretary, ruled that the general leasing act of February 25, 1920, applied to Indian reservations created by Executive order. Subsequently the present Secretary of the Interior asked the Attorney General for his opinion on the question whether such reservations are subject to that act. The opinion of the Attorney General is as follows:

DEPARTMENT OF JUSTICE,
Washington, May 27, 1924.

MY DEAR MR. SECRETARY: I have your letter of February 12 asking my opinion on the question whether Executive order Indian reservations are subject to the leasing act of February 25, 1920 (41 Stat. 437).

The opinion * * * which I now * * * give in response to your question of February 12, is as follows:

The general leasing act (41 Stat. 437) is entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain." Its first section reads in part:

"That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the act known as the Appalachian Forest act, approved March 1, 1911 (36 Stat. p. 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this act * * *."

The title refers solely to the "public domain," and nowhere in the whole act is there any mention of Indians, Indian lands, or Indian reservations of any kind.

The long-settled rule of construction is that general laws providing for the disposition of public lands or the public domain do not apply to lands which have been set aside or reserved for particular public uses, unless the contrary clearly appears from the context or the circumstances attending the legislation. (*Newhall v. Sanger*, 92 U. S. 761; *Bardon v. Northern Pac. R. R. Co.*, 145 U. S. 335, 538; *Mann v. Tacoma Land Co.*, 153 U. S. 273, 284; *Union Pac. R. R. Co. v.*

Harris, 215 U. S. 386.) Concerning Indian reservations, Indian lands, and Indian affairs generally, Congress habitually acts only by legislation expressly and specifically applicable thereto. (*Missouri, Kansas & Texas Ry. Co. v. Roberts*, 152 U. S. 114, 119.) This is true historically, and the fact is one of necessity, because Indians, and especially tribal Indians, remain a people apart for whom it is impracticable to legislate in terms common to them and the whites. (*Ex parte Crow Dog*, 109 U. S. 556, 571.)

The first section of the act describes the deposits and lands to which it of his predecessors (47 L. D. 424, 437, 489), has decided that an act of Congress purporting to deal with lands of the public domain and a certain class of reservations owned exclusively by the United States is applicable to Executive order Indian reservations, although it contains no express or specific reference to Indians, Indian reservations, or Indian lands.

The first section of the act describes the deposits and lands to which it applies. They are deposits and lands "owned by the United States." Then follow words of inclusion which make it clear that the act applies to the national forests of the West. This language in turn is followed by expressions of exclusion, and the reserves expressly excluded are Appalachian forest lands, national parks and lands reserved for military or naval uses.

It is obvious that the words of inclusion and the words of exclusion, taken together, do not by any means embrace all the lands "owned by the United States." Neither Indian reservations, national monuments, bird reservations, nor lighthouse reservations are either expressly included or excluded; and, of course, the United States is the sole owner of other bodies of land such as the Capitol Grounds at Washington, parks and squares in the District of Columbia, national cemeteries, etc., which are neither expressly included nor excluded.

Yet no one would contend that any of these latter lands are subject to the leasing act, whatever mineral deposits they may be found to contain. It is thus apparent that there are many classes of lands owned by the United States to which the leasing act does not apply although they are not expressly excepted from it. Nevertheless, the Secretary of the Interior and others who take the same view base their conclusions mainly upon the broad language "owned by the United States." But this language is not new in the legislation of Congress. The mineral law of May 10, 1872, now embodied in Revised Statutes, section 2319, provides for the disposition of "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed" * * *. The Supreme Court had occasion to consider this language in *Oklahoma v. Texas* (258 U. S. 574). After quoting it, the court said (pp. 599, 600):

"This section is not as comprehensive as its words, separately considered, suggest. It is part of a chapter relating to mineral lands, which, in turn, is part of a title dealing with the survey and disposal of 'the public lands.' To be rightly understood, it must be read with due regard to the entire statute of which it is but a part, and when this is done it is apparent that, while embracing only lands owned by the United States, it does not embrace all that are so owned. Of course, it has no application to the grounds about the Capitol in Washington or to the lands in the national cemetery at Arlington, no matter what their mineral value; and yet both belong to the United States. And so of the lands in the Yosemite National Park, the Yellowstone National Park, and the military reservations throughout the Western States. Only where the United States has indicated that the lands are held for disposal under the land laws does the section apply, and it never applies where the United States directs that the disposal be only under other laws."

The court accordingly held that the mining laws did not apply to certain lands "belonging to the United States" and lying in the south half of the bed of Red River.

The general mining laws never applied to Indian reservations, whether created by treaty, act of Congress, or Executive order. (*Noonan v. Caledonia Min. Co.*, 121 U. S. 393; *Kendall v. San Juan Silver Min. Co.*, 144 U. S. 658; *McFadden v. Mountain View M. & M. Co.*, 97 Fed. 670; *Gibson v. Anderson*, 131 Fed. 39.) Yet "owned by the United States" and "belonging to the United States" are equivalent expressions, and there seems to be no ground whatever for giving one a broader meaning than the other.

The foregoing considerations, I think, are conclusive. However, the leasing act contains a number of other provisions leading to the same result, two only of which will be mentioned. Section 28 declares that "rights of way through the public lands, including the forest reserves, of the United States are hereby

granted for pipe-line purposes for the transportation of oil or gas." If the act were intended to provide for the leasing of Indian reservations, there would be the same need of rights of way for pipe lines through those reserves, but none are granted.

Again, the act, in section 35, provides in mandatory language for the disposition of all the royalty moneys realized. They are to be divided in certain proportions between the Treasury, the reclamation fund, and the States within which the leased lands lie. Yet, as hereafter shown, it would violate practically all legislative precedents for Congress to dispose of lands and mineral deposits in Indian reservations of any kind without directing the payment of some portion of the proceeds to the Indians. It is notable that Secretary Fall, in making his decision, realized this so strongly that, ignoring the mandatory directions of the act, he ordered the royalties from Executive order Indian reservations to be deposited in the Treasury in a special fund to await disposition by Congress.

In view of the foregoing, any reference to legislative history seems hardly necessary. Yet, in fact, none of the numerous committee reports made during the long pendency of the measure before Congress shows any indication whatever of an intent to embrace Indian reservations of any kind; but they do show affirmatively an understanding that the only lands to be affected were public lands, western forest reserves, and lands withdrawn by various Executive orders to protect the minerals therein pending congressional action for their final disposal. Thus, in the report of the conference committee dated February 11, 1919, occur the following significant statements (65th Cong., 3d sess., House Reports, vol. 2 H. R. 1059, p. 20):

"This bill makes possible the leasing, in whole or in part, of approximately 700,000,000 acres of public land, approximately 365,000,000 acres of forest reserve, 35,000,000 acres of coal land, 6,000,000 acres of oil land, and 3,500,000 acres of phosphate land. Under present law all of this land may be passed to patent, without Government regulation, without Government royalties, and without the receipt of any remuneration by the Government, excepting such purchase price as may be provided for the patenting of the same.

* * * * *

"This legislation is made necessary by certain withdrawals made by President Taft during his administration and later by President Wilson during his administration. Both Presidents Taft and Wilson and the Secretaries of the Interior under them have felt the necessity of passing this legislation."

I might stop here; but the reasons advanced by the Secretary, reinforced as they have been by arguments and briefs submitted to me in behalf of lessees or permittees now exploring Executive order reservations under this legislation, seem to require some comment. The gist of the argument is that the President could not reserve the minerals for the Indians; that they remained the property of the United States and were therefore "deposits" "owned by the United States" in the meaning of the leasing act.

That the President had authority at the date of the orders to withdraw public lands and set them apart for the benefit of the Indians, or for other public purposes, is now settled beyond the possibility of controversy. (*United States v. Midwest Oil Co.*, 236 U. S. 459; *Mason v. United States*, 260 U. S. 545.) And aside from this, the general Indian allotment act of February 8, 1887 (24 Stat. 388, sec. 1), clearly recognizes and by necessary implication confirms Indian reservations "heretofore" or "hereafter" established by Executive orders.

Whether the President might legally abolish, in whole or in part, Indian reservations once created by him, has been seriously questioned (12 L. D. 205; 13 L. D. 628) and not without strong reason, for the Indian rights attach when the lands are thus set aside; and, moreover, the lands then at once become subject to allotment under the general allotment act. Nevertheless, the President has in fact, and in a number of instances, changed the boundaries of Executive order Indian reservations by excluding lands therefrom, and the question of his authority to do so has not apparently come before the courts.

When, by an Executive order, public lands are set aside, either as a new Indian reservation or an addition to an old one without further language indicating that the action is a mere temporary expedient, such lands are thereafter properly known and designated as an "Indian reservation"; and so long, at least, as the order continues in force the Indians have the right of

occupancy and use and the United States has the title in fee. (*Spalding v. Chandler*, 160 U. S. 394; *In re Wilson*, 140 U. S. 575.)

But a right of "occupancy" or "occupancy and use" in the Indians with the fee title in the sovereign (the Crown, the original States, the United States) is the same condition of title which has prevailed in this country from the beginning, except in a few instances like those of the Cherokees and Choctaws, who received patents for their new tribal lands on removing to the West. And the Indian right of occupancy is as sacred as the fee title of the sovereign.

The courts have applied this legal theory indiscriminately to lands subject to the original Indian occupancy, to reservations resulting from the cession by Indians of part of their original lands and the retention of the remainder, to reservations established in the West in exchange for lands in the East, and to reservations created by treaty, act of Congress, or Executive order, out of "public lands." The rights of the Indians were always those of occupancy and use and the fee was in the United States. (*Johnson v. McIntosh*, 8 Wheat. 543; *Mitchell v. United States*, 9 Pet. 711. 745; *United States v. Cook*, 19 Wall. 591; *Leavenworth, etc., R. R. Co. v. United States*, 92 U. S. 733, 742; *Seneca Nation v. Christy*, 162 U. S. 283, 288-289; *Beecher v. Wetherby*, 95 U. S. 517, 525; *Minnesota v. Hitchcock*, 185 U. S. 375, 388, et seq.; *Lone Wolf v. Hitchcock*, 187 U. S. 553; *Jones v. Meehan*, 175 U. S. 1; *Spalding v. Chandler*, 160 U. S. 394; *McFadden v. Mountain View Min. & Mill. Co.*, 97 Fed. 670, 673; *Gibson v. Anderson*, 131 Fed. 39.)

In *Spalding v. Chandler*, supra, which involved an Executive order Indian reservation, the Supreme Court said (pp. 402, 403):

"It has been settled by repeated adjudications of this court that the fee of the lands in this country in the original occupation of the Indian tribes was from the time of the formation of this Government vested in the United States. The Indian title as against the United States was merely a title and right to the perpetual occupancy of the land, with the privilege of using it in such mode as they saw fit until such right of occupation had been surrendered to the Government. When Indian reservations were created, either by treaty or Executive order, the Indians held the land by the same character of title, to wit, the right to possess and occupy the lands for the uses and purposes designated."

In *McFadden v. Mountain View Min. & Mill. Co.*, supra, the Circuit Court of Appeals for the Ninth Circuit said (p. 673):

"On the 9th day of April, 1872, an Executive order was issued by President Grant, by which was set apart as a reservation for certain specified Indians, and for such other Indians as the Department of the Interior should see fit to locate thereon, a certain scope of country "bounded on the east and south by the Columbia River, on the west by the Okanagon River, and on the north by the British possessions," thereafter known as the "Colville Indian Reservation." There can be no doubt of the power of the President to reserve those lands of the United States for the use of the Indians. The effect of that Executive order was the same as would have been a treaty with the Indians for the same purpose, and was to exclude all intrusion upon the territory thus reserved by any and every person, other than the Indians for whose benefit the reservation was made, for mining as well as other purposes."

The latter decision was reversed by the Supreme Court and on an entirely different ground (180 U. S. 533). The views expressed in the *McFadden* case were reaffirmed by the same court in *Gibson v. Anderson*, supra, involving a reservation created by Executive order for the Spokane Indians.

The general Indian allotment act of February 8, 1887 (24 Stat. 388, sec. 1), is based upon the same legal theory as the decisions of the courts; for it is expressly made applicable to "any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or Executive order setting apart the same for their use," etc.

If the extent of the Indian rights depended merely on definitions, or on deductions to be drawn from descriptive terms, there might be some question whether the right of "occupancy and use" included any right to the hidden or latent resources of the land, such as minerals or potential water power, of which the Indians in their original state had no knowledge. As a practical matter, however, that question has been resolved in favor of the Indians by a uniform series of legislative and treaty provisions beginning many years ago and extending to the present time. Thus the treaty provisions for the allotment of reservation lands all contemplate the final passing of a perfect

fee title to the individuals of the tribe. And that meant, of course, that minerals and all other hidden or latent resources would go with the fee. The same is true of the general allotment act of 1887, which applies expressly to Executive order reservations as well as to others. Then, beginning years ago, many special acts were passed (with or without previous agreements with the Indians concerned) whereby surplus lands remaining to the tribe after completion of the allotments were to be sold for their benefit. In all these instances Congress has recognized the right of the Indians to receive the full sales value of the land, including the value of the timber, the minerals, and all other elements of value, less only the expenses of the Government in surveying and selling the land. Legislation and treaties of this character were dealt with in *Frost v. Wentz*, 157 U. S. 46, 50; *Minnesota v. Hitchcock*, 185 U. S. 373; *Lone Wolf v. Hitchcock*, 187 U. S. 553; *United States v. Blendaur*, 128 Fed. 910, 913; *Ash Sheep Co. v. United States*, 252 U. S. 159.

Similar provisions have been made in many other cases for the sale of surplus tribal lands, all the proceeds of all elements of value to go to the tribe. In a recent act for further allotment of Crow Indian lands (41 Stat. 751), the minerals are reserved to the tribe instead of passing to the allottees (sec. 6); and moreover, unallotted lands chiefly valuable for the development of water power are reserved from allotment "for the benefit of the Crow Tribe of Indians" (sec. 10). The Federal water power act of June 10, 1920 (41 Stat. 1063), applies to tribal lands in Indian reservations of all kinds, but it provides (sec. 17) that "all proceeds from any Indian reservation shall be placed to the credit of the Indians," etc.

Again, by a provision in the Indian appropriation act of June 30, 1919, the Secretary of the Interior was authorized to lease, for the purpose "of mining for deposits of gold, silver, copper, and other valuable metalliferous minerals," any part of the unallotted lands within "any Indian reservation" within the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, or Wyoming "heretofore withdrawn from entry under the mining laws. These States contain numerous Executive order reservations, and yet the act declares that all the royalties accruing from such leases shall be paid to the United States "for the benefit of the Indians." (41 Stat. 3, 31-33.)

The opening to entry by Congress of a part of the Colville Reservation established in Washington by Executive order has been cited as an exception to this line of precedents. (Act July 1, 1892, 27 Stat. 62.) But the exception is more apparent than real; for Congress, though it expressly declined to recognize affirmatively any right in the Indians "to any part" of that reservation (sec. 8), yet, in fact, preserved the right of allotment, required the entrymen to pay for the lands, and set aside the proceeds for the benefit of the Indians for an indefinite period. Later, the proceeds of timber sales from the former reservation lands were secured to the Indians, but the mineral lands were subjected to the mineral laws without any express direction for the disposal of the proceeds, if any. (Act July 1, 1898, 30 Stat. 571, 593.) The committee reports show that the reservation was considered as improvidently made, excessive in area, and that the action taken was really for the best interests of the Indians. (S. Rept. No. 664, 52d Cong., 1st sess., vol. 3; H. Rept. No. 1033, 52d Cong., 1st sess., vol. 4.)

In respect to legislation and treaties of this character two views are possible: First, that the right of occupancy and use extends merely to the surface and the United States, in providing that the Indians shall ultimately receive the value of the hidden and latent resources, merely gives them its own property as an act of grace. Second, that the Indian possession extended to all elements of value in or connected with their lands, and the Government, in securing those values to the Indians, recognizes and confirms their preexisting right. If it were necessary here to decide as between these opposing views, I should incline strongly to the latter; mainly because the Indian possession has always been recognized as complete and exclusive until terminated by conquest or treaty, or by the exercise of that plenary power of guardianship to dispose of tribal property of the Nation's wards without their consent. (*Lone Wolf v. Hitchcock*, 187 U. S. 553.) Moreover, support for this view is found in many expressions of the courts. Thus, in the case just cited, the court quotes from *Beecher v. Wetherby*, 95 U. S. 517, 525, as follows:

"But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by

them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the Indians; that occupancy could only be interfered with or determined by the United States."

If a transfer by the United States would convey only the naked fee, it goes without saying that the complete equitable property was in the Indians. The earlier and fundamental decisions make this plain. In *Worcester v. Georgia*, 6 Pet. 515, 543, 544, Chief Justice Marshall clearly states that the right asserted in behalf of the discovering European nations was merely a right as against each other, which he defines as "the exclusive right of purchasing such lands as the natives were willing to sell." As late as 1872 the Supreme Court said:

"Unmistakably their title was absolute, subject only to the preemption right of purchase acquired by the United States as the successors of Great Britain, and the sign * * * to prohibit the sale of the land to any other governments or their subjects." (*Holden v. Joy*, 17 Wall. 211, 244.)

The important matter here, however, is that neither the courts nor Congress have made any distinction as to the character or extent of the Indian rights, as between Executive order reservations and reservations established by treaty or act of Congress. So that if the general leasing act applies to one class, there seems to be no ground for holding that it does not apply to the others.

You are therefore advised that the leasing act of 1920 does not apply to Executive order Indian reservations.

Respectfully,

HARLAN F. STONE, *Attorney General*.

HON. HUBERT WORK,

Secretary of the Interior, Washington, D. C.

House Report No. 1637, Sixty-eighth Congress, second session

DISPOSITION OF BONUSES, RENTALS, ETC.

MARCH 3, 1925.—Ordered to be printed

Mr. SNYDER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 876]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 876) to provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, from unallotted lands in Executive order Indian reservations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment, as follows: That the provisions of said act, approved February 25, 1920, shall apply to unallotted lands within Executive order Indian reservations, except as herein modified.

Sec. 2. That there is hereby authorized an appropriation of \$15,000 from the money on deposit in the Treasury to the credit of the Navajo Tribe of Indians derived from bonuses on oil and gas leases, and from oil and gas royalties for expenditure, in the discretion of the Secretary of the Interior, for necessary expenses in connection with the supervision of the development and operation of the oil and gas industry on the Navajo Indian Reservation in Arizona and New Mexico.

Sec. 3. That the provisions of this act shall not apply to the Five Civilized Tribes in Oklahoma.

And on page 2, line 2, of the Senate bill, after the word "be," insert; distributed as follows: 37½ per centum shall be paid by the Secretary of the Treasury after the expiration of each fiscal year, in lieu of taxes, to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State, or subdivisions thereof, for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct and 62½ per centum shall be; and the House agree to the same.

HOMER P. SNYDER,

CARL HAYDEN,

Managers on the part of the House.

J. W. HARRELD,

CHAS. L. McNABY,

HENRY F. ASHURST,

Managers on the part of the Senate.

STATEMENT ON THE PART OF THE MANAGERS OF THE HOUSE

The amendment to the original text of the bill substitutes a definite share in the bonuses, rentals, and royalties from the oil, gas, coal, etc., for the right to tax the production of minerals granted to the State by the House amendment. The percentage to be paid to the State is the same as is now provided in the general leasing act from such minerals when produced on the public domain. There is no limitation in the House amendment upon the tax that might be levied except that it shall be general and the power to tax is the power to destroy.

The percentage to be deposited in the Treasury to the credit of the Indians is equal to a combination of the 10 per cent paid to the United States and the 52½ per cent paid into the reclamation fund as provided in the general leasing act. Out of the Indians' share of 62½ per cent Congress can make appropriations from time to time for all the expenses of administration. The Federal Government should not seek to make a profit from the Indians and they have a more equitable claim to the royalties than the reclamation fund.

The second amendment changes the House amendment and makes it certain that the general leasing act shall apply only to reservations created by Executive order and not to reservations established by treaty.

There is nothing in the act of February 25, 1920, which authorizes any land to be patented under any circumstances, so the words "except that such lands may only be leased and patents shall not be issued for the same," are unnecessary and superfluous.

The last amendment strikes out the taxing provision in the House amendment.

HOMER P. SNYDER,

CARL HAYDEN,

Managers on the part of the House.

[H. R. 9133, Sixty-ninth Congress, first session]

A BILL To authorize oil and gas mining leases upon unallotted lands within Executive order Indian reservations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any Indians or tribe may be leased for oil and gas mining purposes in accordance with the provisions contained in the act of May 29, 1924 (Forty-third Statutes, page 244).

SEC. 2. That the proceeds from rentals, royalties, or bonuses of oil and gas leases upon lands within Executive order Indian reservations or withdrawals shall be distributed as follows: Thirty-seven and one-half per centum shall be paid in lieu of taxes to the State within the boundaries of which the leased lands or deposits are located, upon the condition that the same are to be used by such State, or subdivisions thereof, for the construction and maintenance of public roads within the respective reservations in which the leased lands are situated and public roads contributory thereto and forming a part of the same highway system, or for the support of public schools or other public

educational institutions attended by Indian children; 62½ per centum shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created or who are using and occupying the land, and shall draw interest at the rate of 4 per centum per annum and be available for appropriation by Congress for the expense of administration and for the use and benefit of such Indians.

Sec. 3. That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to allow any applicant to whom a permit to prospect for oil and gas under lands within an Indian reservation or withdrawal created by Executive order has heretofore been issued in accordance with the provisions of the act of February 25, 1920 (Forty-first Statutes, page 437), or the holder thereof, to prospect for a period of two years from the date this act takes effect, or for such further time as the Secretary of the Interior may deem reasonable or necessary for the full exploration of the land described in his permit, under the terms and conditions therein set out, and a substantial contribution toward the drilling of the geologic structure by the holder of a permit thereon may be considered as prospecting under the provisions hereof; and upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands if there be that number of acres within the permit. The area to be selected by the permittee shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they may accrue for that year, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided further*, That the Secretary shall have the right to reject any or all bids.

[S. 876, Sixty-eighth Congress, second session]

AN ACT To provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, from unallotted lands in Executive order Indian reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received under the provisions of the act of Congress approved February 25, 1920 (Forty-first Statutes at Large, page 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," from bonuses, rentals, and royalties in connection with unallotted lands in Indian reservations not affected by the proviso to section 3 of the act of Congress approved February 28, 1891 (Twenty-sixth Statutes at Large, page 795), shall be deposited in the Treasury of the United States to the credit of the particular tribe of Indians for whose benefit the reservation was created and shall draw interest at the rate 4 per centum per annum. Such moneys shall be available for appropriation by Congress for the expense of administration and for the use and benefit of such Indians.

MEMORANDUM SUBMITTED IN CONNECTION WITH PENDING LEGISLATION RELATING TO THE LEASING OF LANDS FOR OIL AND GAS, WITHDRAWN UNDER EXECUTIVE ORDER FOR INDIAN PURPOSES

I. CONDITIONS MAKING LEGISLATION NECESSARY

On May 17, 1884, President Arthur withheld from sale and settlement, several thousand acres of land in Arizona and Utah, as a reservation for Indian purposes. This withdrawal mentioned no particular purpose, other than as "a reservation for Indian purposes"; and named no particular tribe of Indians as beneficiary.

In the summer and fall of 1921 several applications for permit to explore lands within this withdrawal, for oil and gas, were filed in the Department of the Interior under the general leasing act of February 25, 1920 (41 Stat. 437), and after a formal hearing wherein were filed briefs by the Indian Bureau claiming the leasing act did not apply, and by the permit applicants claiming it did, the Secretary of the Interior, on June 2, 1922, rendered his decision (Harrison, 49 L. ed. 139) holding that the leasing act applied, and the Department of the Interior thereafter issued several permits (twenty in all) granting to the several citizens of the United States the right to drill and develop for oil and gas.

The lands covered by these permits are perfectly barren, unfit for human habitation, without water, and unoccupied even by Indians. (See opinion of United States District Court, U. S. v. Harrison, Equity 8288, District of Utah.)

But the obligations of the permits, if to be fulfilled, required action by the permittees, and the story of their hardships in conquering the wilderness is graphically told in the record of the case just mentioned. Suffice it to say here that before drilling equipment could be landed on the ground, many miles of road had to be constructed, water had to be hauled in tank wagons a distance of 20 miles, and later water holes and reservoirs were built, cutting down the distance from 20 miles to 5 miles; machinery and heavy drilling materials and lumber had to be hauled 90 miles from Farmington, the nearest railroad point; camps were set up to house the workmen (many of whom were Indians); one well was drilled 800 feet and lost, and another drilled some 1,600 feet, when the work was stopped by an injunction of the Salt Lake United States District Court. When this happened the permittees had spent over \$270,000 in this enterprise. We use the plural—permittees—because while the well was drilled on one of the permits, several permittees having adjoining permits participated in the expense of the exploration.

In several instances applications for permit, though filed as early as those upon which permits were actually issued, could not immediately be clear listed by the department because of minor defects or conflict of acreage of one kind or another. For example, in two cases applications for permits were filed in June and September, 1921, but permits were not issued because proposed power site locations on the San Juan River conflicted with the acreage covered by the applications for permits to the extent of a very few acres. And while the conflict was being adjusted, but before permits could be issued, the opinion of the Attorney General, hereinafter referred to, holding the leasing act inapplicable, came out and the applications for permit were thereupon rejected. Several other applications for permit were pending in the Department, awaiting the clearing up of minor defects, which were afterwards rejected for the same reason.

Several such applicants, although not having as yet received permits, and not knowing, of course, that there was any doubt about their ultimately receiving them, and long before (almost two years) the Attorney General's opinion, joined with others who had already received permits, in exploring and developing enterprises on the acreage covered by the applications not related or connected with the development described in the preceding paragraph. These applicants, with their permit partners, spent their money in building roads in work preparatory to actual drilling, in constructing water reservoirs and having geological and surface surveys made, and in erecting camps. These expenditures were all made by the applicants with a justified expectation of receiving their permits almost any day.

While this work was going on the Department of Justice was looking into the question as to whether or not the leasing act could apply to these lands, and finally, in June of 1924 (almost two years after the work started on the-

permit exploration), the permittees and applicants for permit were notified that, in view of an opinion of the Attorney General holding that the leasing act did not apply, no leases would be issued, as called for in the permits, even if oil should be discovered.

In July, 1924, the United States brought suit in the United States District Court at Salt Lake—*U. S. v. Harrison*—against the permittee where the well was being drilled, and a temporary injunction was obtained. The case was tried in that court early in 1925, and the court found in favor of the defendant and ordered the case dismissed; an appeal was taken by the United States to the Court of Appeals, where it is now pending, and it is understood that that court has certified certain questions to the Supreme Court for decision. No decision can be expected under a year, and probably not for two years. In the meantime the development of these lands is stopped, and the investment of these people, who have acted with unquestioned good faith toward the Government, is tied up. Not only is legislation needed because of the strong equities existing in favor of these citizens, but because also, if untidely the courts should decide that the leasing act applies to these lands, the Indians would be entitled to no share whatever of the royalties, as that act makes no provision for it. So that from the standpoint of applicants for permits, permittees, and Indians some legislation should be enacted.

[S. 570, Sixty-ninth Congress, first session]

A BILL To provide for the disposition of bonuses, rentals, and royalties received under the provisions of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, from unallotted lands in Executive order Indian reservations and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received under the provisions of the act of Congress approved February 25, 1920 (Forty-first Statutes at Large, page 347), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," from bonuses, rentals, and royalties in connection with unallotted lands in Indian reservations not affected by the proviso to section 3 of the act of Congress approved February 28, 1891 (Twenty-sixth Statutes at Large, page 793), shall be disposed of as follows: 37½ per centum shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State, or subdivisions thereof, for the construction and maintenance of public roads or for the support of public schools or other educational institutions as the legislature of the State may direct and 62½ per centum shall be deposited in the Treasury of the United States to the credit of the particular tribe of Indians for whose benefit the reservation was created, and shall draw interest at the rate of 4 per centum per annum. Such moneys shall be available for appropriation by Congress for the expense of administration and for the use and benefit of such Indians.

That the provisions of said act, approved February 25, 1920, shall apply to unallotted lands within Executive order Indian reservations.

SEC. 2. There is hereby authorized an appropriation of \$15,000 from the money on deposit in the Treasury to the credit of the Navajo Tribe of Indians derived from bonuses on oil and gas royalties for expenditure, in the discretion of the Secretary of the Interior, for necessary expenses in connection with the supervision of the development and operation of the oil and gas industry on the Navajo Indian Reservation in Arizona and New Mexico.

SEC. 3. The provisions of this act shall not apply to the Five Civilized Tribes in Oklahoma.

(Whereupon, at 11.10 o'clock a. m., the subcommittee adjourned to meet at the call of its chairman.)

DEVELOPMENT OF OIL AND GAS MINING LEASES ON INDIAN RESERVATIONS

FRIDAY, MARCH 5, 1926

UNITED STATES SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 o'clock a. m., Hon. Samuel G. Bratton, presiding.

Present: Senators Bratton (chairman of subcommittee), and La Follette.

Senator BRATTON. Gentlemen, the committee will come to order. We have Commissioner Burke with us this morning, and Mr. Commissioner, we are considering Senate bill 3159, which deals with the development of oil and gas upon Indian lands, within Executive order reservations.

We will be glad if you will give us your views upon the matter, in your own way.

Mr. CHARLES H. BURKE. Senator, have you had any hearings so far?

Senator BRATTON. We had one hearing where Mr. Jones testified, and that is all the testimony that has been given up to the present time, Mr. Burke.

Mr. BURKE. Well, I was wondering if there had been brought to the attention of the committee, because I think it ought to be, the Navajo Reservation—that has already been done, has it?

Senator BRATTON. Yes.

STATEMENT OF CHARLES H. BURKE, COMMISSIONER OF INDIAN AFFAIRS

Mr. BURKE. Then, I simply want to very briefly call attention to the fact that the original Navajo Indian Reservation, created by the treaty of 1868, contains, in round numbers, about three million acres of land.

Senator BRATTON. Created by treaty?

Mr. BURKE. Yes, sir; I just want to give you a little picture of this.

Senator BRATTON. All right.

Mr. BURKE. Here is the treaty, and you will notice by article 2:

This reservation shall be and is hereby set apart for use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time may be willing, with the consent of the United States, to admit many of them.

Now, I want to call your attention to section 9. They have agreed to relinquish all right to occupying any territory outside of this area here. [Indicating on the map.] Then, I will call your attention to the treaty, or to the article, because it is rather interesting, as to what these Indians agreed to do, if you will notice here, they were not to oppose the construction of railroads, not to attack any person traveling, nor molest or disturb any wagon trains, mules, or cattle; they will never capture or carry off women or children; never kill or scalp white men, or attempt to do them harm, et cetera.

I merely call your attention to that to show that those Indians at that time and previous thereto were marauding and committing depredations, and they are not Indians of the type that we have in mind when we say the North American Indians. They were under the jurisdiction, as you know, of Mexico, until the treaty of Guadalupe-Hidalgo.

Now, they began, by Executive order, adding to the reservation areas, as outlined here, by a series of Executive orders, and reference to these Executive orders will show that some of them do not make any reference whatever to the Navajo Reservation; they are simply created for the use of Indians, without defining any Navajos. The creation of Executive order Indian reservations began many, many years ago, by the President, without any authority of law whatever. There is no statute that authorizes the President to create Executive order Indian reservations. From time to time as Executive withdrawals were made, it was quite common for later Executive orders to restore to the public domain some part of the area that had previously been withdrawn, and you will find for any number of years, different orders would some of them restore the entire area to the public domain and others a portion of the area. I am mentioning that, Mr. Chairman, to show you that there is a question as to the law with reference to the right of Indians to land in Executive order reservations, as contrasted with what are commonly known as treaty reservations.

The last Executive order that was issued adding land to the Navajo Reservation, was by President Wilson on January 19, 1917. Following that, some of the Representatives or Senators from the States of Arizona and New Mexico, feeling that in self-protection something must be done, or the public domain of those States was going to be eventually put into forest reserves, national parks, or Indian reservations, so, in 1919, Congress, by an amendment to the Indian appropriation bill, provided that no more Executive Indian reservations should be created in Arizona or New Mexico, except by authority of Congress, and the next year, I think it was, when the matter came up again, the matter was discussed, and Congress then made the legislation general, and applied it to all States, Arizona and New Mexico, as well as others.

Now, in 1920, Congress passed what is known as the general leasing law, with reference to oil and gas leases, and I think, myself, it was intended to have reference to the public domain, rather than other lands, although it is pretty broad in its terms, and in 1922 a man by the name of Harrison made an application for leases on Executive order Indian reservations and the General Land Office

did not believe that the law authorized the application of that law to Executive order Indian reservations and denied the application. Mr. Harrison appealed, and on March 31, upon that appeal, Secretary Fall, in a very elaborate opinion, held that the general leasing law of February, 1920, applied to Executive order Indian reservations. Under that law the Indians would not receive any part whatsoever of the royalty or bonus. Fifty-two and one-half per cent would go to the reclamation fund and $37\frac{1}{2}$ per cent to the State in which the reservation was located, and 10 per cent to the Government.

Senator LA FOLLETTE. That is under the general leasing act?

Mr. BURKE. Under the general leasing act. Now, I took the position, and that was the position of the bureau, that the general leasing law did apply, which I did not believe that it did, that Congress did not intend it to apply, because I was very certain that the friends of the Indians in the two bodies of Congress, and other friends, would not sit by and permit such legislation to be enacted without some protest, and that it could not be possible that it was intended that these Executive order Indian reservations should be leased for oil and gas purposes, and that no part of the royalty or bonus should go to the tribe. This decision of Harrison was dated June 9, 1922.

Senator BRATTON. That is the decision by Secretary Fall?

Mr. BURKE. That is the decision by Secretary Fall; yes, sir. The Indian Bureau, as I say, was doing everything it could to bring about a different result, but when this decision was rendered, why, for the time being, we were up against it, to use that expression. The Indian Rights Association, and that is an organization which has existed for more than 40 years, and its purpose is to observe Indian administration, and to suggest both as to legislation and other matters, wherever it feels that an injustice is being done, was very much opposed to the decision of Secretary Fall, and we have, I say, cooperated very closely, which is shown by correspondence that appears in the files.

Mr. Brosius was the legislative representative and is still, and we had many conferences. Following that, certain permits were issued under the general leasing law, and I think the number that were actually issued was 20.

Senator BRATTON. Covering 2,560 acres each, I suppose?

Mr. BURKE. Not all of them: some of them were leases for less; that was the maximum. It ran along until March, 1923. On March 4 we had a new Secretary come in. Secretary Fall went out and Secretary Work came in, and very soon after he came into office I wrote a letter, dated March 31, I think it was, 1923,—and I want to read just a little of it:

Attention is invited to the decision of former Secretary Fall in the appeal of E. M. Harrison from the decision of the General Land Office of January 14, 1922, in which his application for prospecting permit under section 13 of the act of February 25, 1920 (41 Stat. L. 437) for a tract of land in township 45 south, range 22, east, S. 1. M., Utah, was rejected.

Then I go on and recite the circumstances and what happened, and then at considerable length, as you will see, I will not take the time to read it, I presented the precedents of where repeatedly Congress had not differentiated in the disposition of timber on Executive order

reservations from lands, or from timber taken from a treaty reservation, and that the policy had been established that the reservation, in fact, did belong to the Indians and I cite many acts of Congress here, and then I wound up by saying:

This subject is being brought to your attention with the request that it be referred to the solicitor for the Interior Department for an opinion as to the Indians' title to land, within Executive order Indian reservations and also to the applicability of the general leasing act of February 25, 1920, to such lands. In this connection attention is invited to the brief filed by the Indian Rights Association regarding this matter.

The Indian Rights Association had furnished me a brief and I had transmitted that to the Secretary. In conversation with him I had practically an understanding that, pending an inquiry, and so forth, there would be nothing done, further, with reference to recognizing permittees, and what we were endeavoring to do was to have no more action until Congress convened in December, when we hoped to bring it to the attention of Congress to get legislation.

On November 15, 1923, the Secretary, I think inadvertently, addressed a letter to me in which he called attention to the fact that the matter had received consideration, and after stating the circumstances, he said:

Under these circumstances I would not feel warranted in overruling my predecessor or in disturbing the settled practice of the department and the rights acquired thereunder, under which large expenditures have already been made. This view is strengthened by the facts already stated, that the Indians would derive no benefits from a change in ruling, whereas permittees and applicants for permits would be injured.

I am of the opinion that the situation calls for legislative action, in the interest of the Indians and will therefore recommend to Congress legislation which will specifically authorize and devote a fair share of the receipts from any oil and gas produced on these lands to the use and benefit of the particular Indians interested.

Now, that was the situation in November, 1923, when I received this letter. At the same time I may say an order was issued by the First Assistant Secretary Commissioner of the General Land Office, and a copy sent to me, referring to application for oil and gas and prospecting permits on Indian reservations:

I inclose for your information copy of a letter, and in accordance therewith you will take such proper action on such pending application—

In other words, the matter had been decided and the Commissioner of the General Land Office was directed to proceed to consider applications for permits under the general leases.

As soon as I received this, I called immediately upon the Secretary and went into an explanation quite fully with reference to it, with the result that tentatively or informally, action was withheld, and at this point I want to call your attention to something that I think is very pertinent.

The Secretary of the Interior, at the head of the Interior Department, has under his supervision other bureaus than the Indian Office, and among them the Reclamation Service and the General Land Office. Under the general leasing law, the reclamation fund would receive 52½ per cent of the proceeds of royalties from oil and gas leases, and the State in which the reservation was located, 37½ per cent, and the Government 10 per cent, and the administra-

tion of the law would be under the General Land Office. Mr. Finney, who has been in the department for 30 years or more, and is the First Assistant Secretary, and a very able lawyer, at one time connected with the General Land Office, has to do directly with matters of supervision, including the Reclamation Service and the General Land Office, and he has been very firm in his opinion, and I think had something to do with the opinion of Secretary Fall of 1902, in holding that the general leasing law of 1920 applied to Executive order Indian reservations.

When this letter of November 15 was issued, which I have referred to, in conference with Mr. Finney, it was suggested that if we would let the matter stand until Congress convened, we might have legislation, so far as the department was concerned, that would give to the Indians all of the royalty, and that was the one thing that we were most concerned about, was to get the royalty for the Indians. Congress convened and a bill was transmitted by the Secretary to the Congress, suggesting and recommending the adoption of the bill which gave all of the royalties to the Indians, and that bill was amended, and finally an amendment was incorporated to give to the States in which the lands were located, 37½ per cent of the royalties.

The bureau and myself opposed it in every way we could, and we had the cooperation of the Indian Rights Association, had many conferences with those that were interested in the legislation, and I took a very pronounced stand that if any part of the royalty was to go to the States, that it ought to be used for the benefit of the Indians, in road building within the reservation where the royalties arose, or where derived, or for the education of Indian children. The bill was back and forth between the two bodies of Congress. A conference report was made and agreed to in the Senate, came over to the House and Mr. Dallinger, a Representative from Massachusetts, who had been prompted by the Indian Rights Association, made a point of order against the conference report, that the conference had exceeded their authority, and the point of order was sustained, and the legislation failed, and so there was no action.

I am mentioning this, Mr. Chairman, to show to this committee, that at all stages, since this question came up, the Indian Bureau and the Commissioner of Indian Affairs, has in every way that it was possible, protested against any legislation that would not give to the Indians the royalties from oil and gas leases on Executive order Indian reservations, and that we have been responsible to quite an extent in preventing any legislation. I mention that because it appears that now there is an organization that has appeared in Washington, and is maintaining headquarters here, that is assuming to suggest legislation to Congress, and to protest against legislation that may be pending, and as part of its program it issues from time to time propaganda that is misleading, that is misinformation that contains statements that are absolutely false, and that the purpose apparently of it is to try and discredit the Indian Bureau with reference to matters affecting Indians. So far as I am personally concerned, it is not necessary for me to mention my record with reference to legislation and matters affecting Indians.

Senator LA FOLLETTE. To what organization do you refer?

Mr. BURKE. I think it is known as the Indian Defense Society. I will show you in a moment some of the things that causes me to make this statement. I went into Dakota when it was a Territory 44 years ago. I have lived practically a neighbor of the Sioux Indians. During that time I have had something to do legislatively with reference to Indian matters and I think my record is clear, in any event, I invite anyone to attack it, who thinks otherwise. Five years ago I was invited by the President, entirely unsolicited, was not an applicant, and not a candidate and had no thought of the office, to become Commissioner of Indian Affairs, and was appointed and took office on April 1 and I have been in that position since that time. I want to say to the committee that while I have had some experience, there is a great deal I do not know about this problem, and that at all times I invite constructive criticism, constructive suggestion, or anything that will enable me, as commissioner, to better administrate the affairs of my office, or to do anything that will be for the better welfare, and so forth, of the Indians generally, and it is gratifying that in most instances those who pose as the friends of Indians, either in person or by letter to the bureau, they come with their suggestions, with complaints or asking for information, but, so far as this association is concerned, to which I have referred, at the present time, during this session of Congress, is the first we knew of their attitude with reference to any matter that might be pending. We hear of it usually through a circular or some statement that may be issued by some organization, that I presume is paid for doing it.

I want to call attention to a circular issued, Bulletin 102, National Popular Government League, Judson King, director, with reference to this legislation. Under the heading "Mr. Burke for a high income tax, to wit, 37½ per cent," and then it goes on to say that the commissioner is attempting to take from the Indians, or levy a tax on the royalties of the 37½ per cent, and quoting from the circular:

Now, Mr. Burke proposes to turn the 37½ per cent over to the State. It is a gross injustice to take from the wards of the Federal Government so large a portion of their income for State purposes, etc.

Then there is another misleading statement that it is proposed, under this law, to exempt from taxation the oil operators who may be operating leases on an Executive order Indian reservation, and all the way through the circular it makes statements either directly or otherwise that the pending bill that you, Mr. Senator, have introduced, and which is now before this committee, is my bill—it is the Burke bill.

Senator BRATTON. Well, Mr. Commissioner, I will take full credit for the bill.

Senator LA FOLLETTE. Do I understand that that was issued by this organization you referred to as the Indian Defense Society?

Mr. BURKE. Mr. Senator, I am of the opinion that it was issued by this organization at the instance of that association, but that, of course, I do not know. Other propaganda has been issued by the representatives of the organization in the same form, referring to other matters pending before the Congress that are even more misleading and contain more false information than that circular

does, with reference, especially, to the position of the Indian Bureau, and the attitude of the present Commissioner of Indian Affairs.

Now, we are confronted with a condition. I want to get something for the Indians from oil and gas royalties, bonuses, etc., on Executive order Indian reservations. I was opposed to the application of the general leasing law of 1920 and wanted the law that refers to treaty reservations to apply to other reservations, and I will show you why. I did not believe there ought to be two bureaus in the first place, operating on a reservation, making oil leases, one under one law and another under another, and furthermore, it might possibly happen that there would be a structure that would be partially on a treaty reservation and partially on an Executive order Indian reservation, and therefore there should be a uniform policy and but one law about oil and gas leases on Indian reservations, whether they were Executive order, treaty, or otherwise. Then, I was opposed to recognizing any permittees or those who had made application for permits, on the theory that the general leasing law did not apply, and that they acquired no rights when they went upon Executive order Indian reservations, and attempted to show a permit.

Senator BRATTON. Well, on that, Mr. Commissioner—

Mr. BURKE. I will clear that up.

Senator BRATTON. All right, I will hold my point.

Mr. BURKE. I am showing you the position of the Indian Bureau.

Senator BRATTON. All right.

Mr. BURKE. We wanted the law that applies to treaty reservations apply to Executive order Indian reservations, and we wanted all of the royalty for the Indians. That was our position. The Secretary has, I told you, sitting at the head of a department, that has other bureaus beside the Indian Bureau, and hearing from the General Land office and his assistant, Mr. Finney, and the Commissioner of Indian Affairs, representing the Indians, was attempting to adjust what would be a fair compromise of this situation, and so, we finally worked out, in substance, what is incorporated in your bill, as a compromise measure, and under that bill, the first section which extends the law with reference to leases for oil and gas purposes, on treaty reservations to Executive order Indian reservations, and so on, that we gained our point.

On the question of recognizing permittees or applicants for permits, as a compromise, we worked out a proposition that would recognize 20 permittees who had received permits—that was another compromise.

On the question of the disposition of the proceeds, we compromised on a basis of 62½ per cent to the Indians, 37½ per cent to the State, with the condition that the 37½ per cent should be expended on road construction within the reservation, or upon roads leading to the reservation or for the education of Indian children; and so, the Secretary, acting now as an arbiter between the different interests, so far as the department was concerned, went to the extent of standing with the Indian Bureau, as far as I have indicated, which I thought was very fair, and then we had calling constantly Senators, Members of the House, representatives of oil com-

panies, persons who were interested in some of these permits, and there were I don't know how many conferences covering a period of many weeks; and in these conferences, with very few exceptions, the Assistant Secretary of the Interior, Mr. Edwards, who has supervision directly of the Indian Bureau, was present, and we worked out this proposition in conjunction with the two Assistant Secretaries and the Secretary himself; and so this is the bill having the approval of the department; and, as far as the department is concerned, it is the department and not of the Commissioner of Indian Affairs.

The Commissioner of Indian Affairs has gone along until he could reach or get a situation that was a fair one under all of the circumstances, and so we have given our approval to the bill with the exception of the last paragraph, and to that we are not offering any objection, if it does not go farther.

Now, I want to go back to the last Congress. I was told more than once that unless we were willing to consent to legislation that would recognize all of those who had made applications for permits, that there would be no legislation. In other words, that those who had filed applications for permits would organize and they would see that there was no legislation. Up to this point, as I have already indicated, we were in close conference at all times, with the Indian Rights Association, and when this bill that was introduced in the House was up for consideration before the House committee for the first time, there was objection, and that came from this Indian Defense Society, from whom we had not had a word during all of these four years that we have been endeavoring to get a solution of this problem so that something could be gotten by the Indians, and then we are characterized as favoring taking from the Indians and giving to somebody else something that belongs to the Indians, when the facts are, Mr. Chairman, what we are trying to do, is to get something for the Indians that they now haven't got, and instead of taking from the Indians we propose to give to the Indians 62½ per cent of these royalties and then we have succeeded in getting an understanding that the other 37½ per cent shall be expended practically for their benefit, and I think it is a good solution.

Now, another word, Mr. Chairman, there is not any doubt in my mind, if this bill is enacted into law, that the Indians will receive more in royalty and bonus than they would receive under the general leasing law, if they got it all.

Senator BRATTON. That is interesting, Mr. Commissioner, if you will just develop the thought there.

Mr. BURKE. I will tell you why.

Senator BRATTON. Yes, proceed.

Mr. BURKE. Under the the general leasing law a permittee may secure a lease for 640 acres, and of that royalty, I mean, he pays for that, in royalty, only 5 per cent. Under the law that applies to treaty reservations the royalty is fixed by disposing of it at public auction to the highest bidder, and 160 acres in the Osage country in Oklahoma, as a bonus, sold for \$1,900,000. Under the general leasing law a person having a permit and getting a lease would have only had to pay 5 per cent, and so I say under the provisions of this law

we would get more by taking 37½ per cent and giving it away entirely than we would get under the general leasing law.

Now, I have been compelled to change my attitude some over what it was in the last Congress, and I will tell you why. I omitted to state that following this letter of November 15, 1923, the Secretary and the President also simultaneously at our instance, and at the instance of the Indian Rights Association, referred the question of whether or not the general leasing law applied to Executive order Indian reservations to the Department of Justice, and as I say, the matter of applications was suspended. There was nothing doing, I think, in May, 1924, the Department of Justice rendered its opinion.

Senator LA FOLLETTE, May 27.

Mr. BURKE, May 27, 1924, in which it held that the title of these lands was not in the Indians and the general leasing law did not apply to Executive order Indian reservations, and the general effect of that decision was there was no law whatsoever that made it possible to lease for oil and gas any land in an Executive order Indian reservation. Now, that made us pretty confident. We were in a position we could dictate, but what happened? The Attorney General brought a suit to eject this permittee, Harrison, or the Midwest Oil Co.—I don't know. It was the man that made this application that Secretary Fall recommended, and suit was brought in the United States District Court for the State of Utah to eject the operator from the premises and the United States District Court for the District of Utah held that the general leasing law did apply to Executive order Indian reservations. Very promptly the Government appealed to the circuit court of appeals. We were very confident that the decision would be reversed, but it seems we were doomed to disappointment, because the court, instead of deciding the question, certified it to the Supreme Court of the United States where it is now pending, indicating either that the court wasn't able to determine, or to agree among the members of the court, or that it was a doubtful question and that it ought to be decided by the Supreme Court of the United States, and there it is pending to-day.

Senator BRATTON. In that connection, Mr. Commissioner, it is rumored, and I have understood that the court stood two to one in favor of holding that the general leasing act did apply. Did you hear that as a rumor?

Mr. BURKE. Merely as a rumor. I have no information with reference to it, I do not even have the file, but I have found a letter from one of the justices, Justice Cannon, a former Senator from Iowa, about the time this case was pending, he wrote us requesting that we furnish him with a certain copy of a certain Executive order, indicating that he wanted to read it. But, here is the situation now. If it should happen that this decision of the United States District Court for the District of Utah should be sustained by the Supreme Court of the United States, then the general leasing law applies to every treaty, every Executive order Indian reservation, and the Indians will not get a farthing either in royalty or in bonus, or in proceeds that may arise from leases, and that is not all. You may say, "We will take care of that by legislation," if the court

sustains that position of the District Court of Utah, but, it will mean a recognition of not only the 20 permittees, but the 450 or more other applicants, who have made their applications for permits, and would probably be considered as having acquired a vested right, and so, as to that number of applications we could not by any legislation do anything to change the situation. Possibly we might take the 10 per cent that is going to the United States; maybe we could take the 52½ per cent going to the reclamation fund, and maybe you could take the 37½ per cent from the State, but I doubt it unless Congress changes in personnel from what it is at the present time, because some of these Representatives have insisted that there will be no legislation unless the State does get something out of it. Now, it has been said that because we say "in lieu of taxes," that we are going to tax the Indian. Why, there is not anything to that statement whatsoever. Under the law passed in 1924 it is possible for the State to levy a tax on royalties that may arise from leases on an Indian reservation, and all this does is to say that the 37½ per cent, it means that they can not tax that any further. It does not have any reference to individuals, simply that the Indian's royalty of 62½ per cent goes into the Treasury, to his credit, and can not be taxed. It does not say anything about production or operators or anything of that kind. There is absolutely nothing in any such suggestion.

Senator BRATTON. Their share would be subject to taxation, would it not?

Mr. BURKE. It would, unless you had something in this law to prevent it.

Senator BRATTON. Under this law it would be?

Mr. BURKE. Yes.

Senator BRATTON. Sixty-two and one-half per cent of the royalty going to the Indians would not be subject to taxation?

Mr. BURKE. Not under this bill.

Senator BRATTON. Nor the 37½ per cent going to the State?

Mr. BURKE. There certainly would not be any taxes on that, but that has nothing to do—

Senator BRATTON. With the producer and operator.

Mr. BURKE. Nothing in the world, absolutely. Now, we have this situation. There is a promise that at present is very bright for a development in the Navajo country, that may equal almost any oil development we have had in recent years. It means a great deal to the Indians. It means a great deal to the State of New Mexico that there be some legislation at this time, in order that this development can take place. There are parties standing ready to-day to build a pipe line, possibly extend a railroad; we have numerous applications from other companies that have not yet obtained any leases in that country expressing a hope that there may be a sale in the near future so that they will have an opportunity to get into this field, and so it is opportune, it seems to me, in this Congress, to have this question very promptly settled. I have a telegram which came yesterday, not in response to anything sent out; it came voluntarily from Governor Hagerman of your State, whom you know.

Senator BRATTON. Very well.

Mr. BURKE. He says he had a conference, and that the Indians are perfectly satisfied with 62½ per cent royalty in Executive order land, and anxious that the matter be settled. We have not had, Mr. Chairman, any complaint, any objection to this proposed legislation, other than what has come from the Defense Society, and that did not come until after we had reached what seemed to be an understanding that we thought was fair, fair to everybody, and whether or not this opposition is desirous of defeating legislation that will give the Indians anything whatsoever, I do not know, but I can not see but what, if they are successful, that the result of their efforts will be to deprive them of receiving anything.

I want to reiterate that at all times we have asked all of the royalties. If we could have our way, that is the legislation we would now be asking, but in view of this understanding, and in an effort to get some legislation, we have accepted what is a compromise, and I think you gentlemen, both of you, will appreciate that legislation usually is a result of compromise. Old Uncle Joe Cannon, the greatest philosopher that ever served in the House of Representatives, one day I heard him make this statement: "On many occasions," he said, "in my experience, legislation is usually the result of compromise, and in the last analysis I am not certain but it is better," so here is a proposition of compromise that I believe is fair, and one that it is possible to enact.

Senator LA FOLLETTE. Mr. Commissioner, as I understand it, you have not personally changed your opinion with regard to the rights of the Indians on these Executive order reservations. Your acquiescence in this legislation has been the result of what you felt the necessity of a compromise with certain of the other bureaus in the Department of the Interior and other interests who hold to another view.

Mr. BURKE. Yes, sir; and because the Secretary and head of the department has indicated to me that that was his wish.

Senator LA FOLLETTE. One other question. The opinion of Attorney General Stone referred to in your statement as issued May 27, 1924, and, by the way, Mr. Chairman, I think we should incorporate that as part of this record.

Senator BRATTON. I think it has already been incorporated.

Senator LA FOLLETTE. If I understood you correctly you felt at the time that this opinion was rendered that if it did not specifically support your contention that the Indians were entitled to the entire right to these Executive order reservations, that it did at least tend to support that contention.

Mr. BURKE. Yes, sir.

Senator LA FOLLETTE. Because I note that it states here in respect to legislation and treaties of this character:

Two views are possible, first, that the right of occupancy and use extends merely to the surface, and the United States, in providing that the Indians shall ultimately receive the benefit of the hidden and latent resources, merely gave them their own property, as an act of grace. Second, that the Indian possessions extended all of the elements of value in and connected with their land, and the Government in securing these values to the Indians recognized and confirmed their preexisting right. If it were necessary here to decide as to those

opposing views I should incline strongly to the latter, mostly because the Indian possession has always been recognized as complete and exclusive until terminated by conquest or treaty or by the exercise of that plenary power of guardianship.

Now, I would like to ask you, Mr. Commissioner, as to whether or not in your opinion there is a strong legal and moral right of the Indian to the entire vested rights in these Executive order reservations?

Mr. BURKE. Well, that has been our contention, but there never has been a case, there is no case similar to this Navajo, where the original treaty reservation was only 3,000,000 acres and it has been increased by more than 10,000,000 of acres which were added unquestionably for the purpose of affording more grazing areas to the Indians, and it is doubtful from a strict legal sense that the court would hold that these Executive orders vested in the Indians' title to everything that was in the land described in those areas.

Senator LA FOLLETTE. Well, now, what would be your opinion if this matter were permitted to go through the court, without Congress taking any action. I take it, in view of the fact, as you say, you have, as a result of compromise, come to endorse this bill, it is your position that the Indians have lost or would have lost the chance of obtaining a more favorable disposition of this controversy, if it is permitted to go through the courts than if Congress takes some action.

Mr. BURKE. I think it is doubtful, I think there is too much at stake, that the chances are too great. Nobody knows what a court will do until it acts.

Senator LA FOLLETTE. I admit that.

Mr. BURKE. And furthermore there is a situation prevailing now that it would seem to me to make it particularly desirable to have some legislation to go ahead with this other development, which is really going to just start in the Navajo country.

Senator LA FOLLETTE. In your opinion would the provisions of this bill tend to affect the rights of the Indians to other Executive order reservations?

Mr. BURKE. It is general to all Executive Indian reservations, but Senator, you will observe one thing the bill does not do, it does not in any way raise the question of title. We have kept away from that purposely for fear of the legislation that would arise if you attempt to settle that question.

Senator LA FOLLETTE. Is it your opinion that legislation enacted at this session might be taken into consideration by the Supreme Court?

Mr. BURKE. No, I do not think that would affect the decision except this, if we enact this legislation, we have a tentative understanding that the suit will be withdrawn and the judgment of the district court will be set aside, and there will not be any judicial determination of the question.

Senator LA FOLLETTE. It will postpone the decision?

Mr. BURKE. No, it will simply be as if there had been nothing done, as if there had never been any suit. They simply will dismiss the bill in the Supreme Court and let it stand at that. Unless we did that the decision of the court of Utah, would be res adjudicata

so far as the Harrison property is concerned, but I understand this will settle the matter and there will be no judicial determination of it, and what has been done will be undone—that is part of the compromise.

Senator LA FOLLETTE. With regard to the taxation feature, not exactly the taxation feature, but with regard to the royalty feature of the bill, I think I understood you to say in substance that more royalty would accrue to the Indians under the terms of this bill than if the law applying to oil and gas on treaty reservations were extended—

Mr. BURKE. No; on the public domain.

Senator LA FOLLETTE. I misunderstood you. You meant under the general leasing act.

Mr. BURKE. Under the general leasing act, these 20 permittees and 450 other applicants would probably get leases, if they wanted them, and under those leases up to 640 acres in each lease, the Indians would only get 5 per cent of the royalties.

Senator LA FOLLETTE. Yes.

Mr. BURKE. And so I contend that under this bill we would get more out of the 62½ per cent, and then I want you to keep in mind all the time that this 67½ per cent is going to be used for the benefit of the Indian.

Senator LA FOLLETTE. Well, it provides here:

That a portion of such money to be determined by the legislature of such State, shall be used by such State, or subdivision thereof, for the construction and maintenance of public roads within the respective reservations in which the lands are situated and public roads contributory thereto and forming a part of the same highway system, or for the support of public schools of the State or other public educational institutions attended by Indian children.

Senator BRATTON. Mr. Commissioner, reverting back to the historical facts surrounding this Navajo Reservation: As I understand you, the original reservation was created by treaty in 1868, and embraced an area of 3,000,000 acres?

Commissioner BURKE. Approximately.

Senator BRATTON. What is the area of the present reservation?

Commissioner BURKE. As far as we have any figures, it is about 13,300,000 plus, although I have been told that it is 15,000,000 acres.

Senator BRATTON. The additional 10,000,000 acres have been brought in by Executive orders made from time to time since 1868?

Commissioner BURKE. Yes, sir.

Senator BRATTON. So that in the reservation we have some land which might be called treaty reservation land, and some Executive order reservation lands?

Commissioner BURKE. This is all the treaty there is. I want to say that the greater amount of Executive order Indian reservations, by far, is in Arizona and New Mexico. The Executive order lands in reserved areas elsewhere are not very extensive. There is about three-fifths of the land in the reservations created by Executive order.

Senator BRATTON. Yes. In fact, the Government has 43 per cent of the land in New Mexico off the tax rolls, and we do not get a dime of income from it.

Commissioner BURKE. If you will examine the debate when this law prohibiting the further extension of Executive withdrawals was

under consideration—and by the way, the Indians used to be allotted on the public domain, and they were being allotted in New Mexico and Arizona outside of the reservation—it was asserted that some of these Executive withdrawals were probably obtained with the motive on the part of the railway companies that had lands granted with them, and when the reservation was extended they got the right to withdraw and take lands elsewhere, which usually resulted in great profit to them, because they got better lands. But you probably know more about that than I do.

Senator BRATTON. Mr. Commissioner, personally I have had a great many protests from these applicants who applied under the general leasing act of 1920 and who thought they had rights there under the interpretation of the Secretary of the Interior. I gather from your statement that you are not in favor of recognizing them further than this bill has gone?

Commissioner BURKE. That is as far as I think you ought to go.

Senator BRATTON. Do you base that position upon the fact, to which you have already addressed yourself, that it would decrease the income to the Indians, or do you have some other objection?

Commissioner BURKE. In the first place, it will create confusion and a situation that will entail great detail in trying to adjust it, that is going to cover quite a period. Any person who made any kind of application whatsoever will assert a right to a permit. I believe that a great many of them are purely speculative, that they are not supported by any merit other than the simple filing, and that they have no equity, not having expended any money. So if you recognize the 20 permittees and then such others as can qualify under the provision that you have in your bill, it seems to me that that is as far as you ought to go.

Senator BRATTON. You say they have expended no money. Am I correct in the understanding that under the general leasing act of 1920 it was optional with the Secretary as to whether he would grant a permit to those applicants, so that an applicant had no assurance of a permit until it was actually issued?

Commissioner BURKE. I think it was his duty to grant a permit where the applicant complied with all of the requirements. That would be question for determination, of course. I am not familiar with the administration of that law; perhaps Mr. Jones is.

Mr. JONES. I think, Senator, that it is considered discretionary. For instance, if he applied for a permit in the Arlington Cemetery the Secretary would turn him down—or any other land that was not proper for him to grant a permit on.

Senator BRATTON. The reason I addressed that question to you, Mr. Commissioner, was this. A great many of these applicants are urging the point that it is true they expended no money, but the reason they did not do so was that they had no assurance they would get a permit until it was issued, because it was optional with the Secretary of the Interior, and naturally no prudent business man would expend any substantial sum of money until he was assured that he would get a permit. While we were discussing the equities of that situation I wanted your views upon that. If you base your objections to recognizing those people upon the fact that it will entail a great deal of detailed work, that is one situation.

If you base it upon the fact that it will decrease the income to the Indians—

Commissioner BURKE. There is no doubt about that.

Senator BRATTON. That is another element to be considered.

Commissioner BURKE. Certainly.

Senator BRATTON. And if you base it upon both combined, that is a third. If there are any other objections I should like to hear them.

Commissioner BURKE. When I first considered this suggestion of recognizing the permittees my first concession was that the Secretary have discretion to recognize only such of the permittees as in his judgment were entitled to consideration. I was trying to hold it down.

Senator BRATTON. In Senate bill 1722, introduced by Senator Jones, he expressly confirmed, if you recall, the permits already issued, and gave the applicants the right to have their applications reinstated, provided they applied to the Secretary within 90 days after the act became effective. If a provision of that kind were inserted in this bill do you think it would decrease the income to the Indians, and would it place a great deal of detailed work on your department?

Commissioner BURKE. Yes; and there is another reason.

Senator BRATTON. What is that reason?

Commissioner BURKE. I am afraid it will defeat the legislation. I am looking at this question from a practical standpoint and as one who has had some legislative experience. I have learned that in legislation usually one can not have things just as he would like to have them, and that where there are differences there has got to be a yielding and concessions made, and I have felt that this compromise is one that is very much more susceptible of successful action than if you go further.

Senator LA FOLLETTE. In your opinion, Mr. Commissioner, does the language of this act confine the relief to those who actually went on in good faith and expended money?

Commissioner BURKE. The first part of the section recognizes the 20 who have permits. Then the chairman in his bill has incorporated a provision that is limited only to a class. Will you read that, Senator?

Senator BRATTON. It is limited to those who shall show to the Secretary of the Interior that he, or the party with whom he has contracted, has done all of the following things, to wit: Expended money or labor in geologically surveying the lands covered by such application; has built roads for the benefit of such lands, and has drilled or contributed toward the drilling of the geological structure upon which such lands are located. Then the right of prospecting and leasing is provided in that section.

Commissioner BURKE. That would admit, I understand, a very limited few more. I think they have said not more than half a dozen, but I am not informed.

Mr. JONES. We only know positively of two that would come in under that last provision.

Commissioner BURKE. When the matter was being considered and that amendment was suggested and Secretary Edwards and I con-

ferred in regard to it, we declined to incorporate it in the report, but indicated that if the Congress wanted to add anything to make more than the 20 permits and it was limited in substance as you have it the department would not oppose it.

Senator BRATTON. Mr. Commissioner, I am sure we appreciate your statement.

Commissioner BURKE. I want to say this, Mr. Chairman, before I leave you. I see Mr. Brosius is here. I am sorry he was not present to hear my statement. He is legislative representative of the Indian Rights Association, and I think he will tell you that we have had pretty close cooperation and communion during the last three or four years over this subject. What he will say as to this bill I do not know.

I want to suggest another thing, which you may wish to consider, in view of the fact that so much has been attributed to me in this matter. Perhaps you ought to have Assistant Secretary Edwards at least come before the committee and see if he will not confirm everything that I have stated with reference to the details that resulted in the report that finally came out on the Jones bill. Your bill had not been reported on, and I presume the report on the Jones bill will apply.

Senator BRATTON. That was, I think, the purpose of the committee—to regard that report as reflecting the attitude of the department.

Commissioner BURKE. Have you any further questions?

Senator BRATTON. No.

Senator LA FOLLETTE. That is all I have to ask.

Senator BRATTON. Mr. Wallace, I think, stated a few days ago, that he might be compelled to leave.

Mr. WALLACE. I think likely I shall be here for a day or so, Mr. Chairman. I was wondering, inasmuch as Mr. Brosius is here and Commissioner Burke is not well and may have to go to bed, if you would not like to hear Mr. Brosius.

Senator BRATTON. We will be glad to hear Mr. Brosius.

Mr. BROSIUS. Mr. Chairman, I did not know of this meeting until a few moments ago. If there is going to be any further consideration of the subject, as has been suggested by the Commissioner, and if Mr. Edwards is likely to be here, perhaps I would have something to say at that time.

Senator BRATTON. Very well.

Commissioner BURKE. May I ask Mr. Brosius two or three questions, Mr. Chairman.

Senator BRATTON. Oh, yes.

Commissioner BURKE. I will ask you, Mr. Brosius, whether, going back to the time that Secretary Fall rendered his decision in the Harrison case, we did not frequently confer with reference to this situation?

Mr. BROSIUS. We certainly did.

Commissioner BURKE. And did you not furnish me a brief—I think, one that was prepared by a prominent lawyer in Massachusetts, Mr. Storey?

Mr. BROSIUS. Mr. Moorfield Storey—and other statements coming more directly.

Commissioner BURKE. And at all times you had my full confidence with reference to our position in this matter?

Mr. BROSIUS. Well, I thought so. I think so still.

Commissioner BURKE. That is all.

Senator BRATTON. Mr. Collier is present and desires to be heard upon this matter. If it is convenient to Mr. Collier we will have his statement now.

STATEMENT OF JOHN COLLIER, MILL VALLEY, CALIF., EXECUTIVE SECRETARY AMERICAN INDIAN DEFENSE ASSOCIATION (INC.) NEW YORK AND SAN FRANCISCO

Mr. COLLIER. Mr. Chairman, without wanting to use up any of the time of the committee, I must speak for a moment on, as it were, a matter of personal privilege, inasmuch as the commissioner has mentioned the Indian Defense Association and its methods.

Of course, the Indian welfare bodies do not have to assert a right to make suggestions to the Congress or to the public. Obviously, however, if they make incorrect statements, or if they create fictitious excitements and issues, they lose credit and Congress will not listen to them. The statement of the commissioner implies that that has been done in this particular, and in other particulars, in reference to this matter and other matters, and the commissioner likewise implies that it is the custom of the American Indian Defense Association to ignore the department and go to the public, so that the department learns from the newspapers, as it were, what is coming.

Mr. Meritt, discussing another bill before the House Indian Affairs Committee, created a similar impression yesterday.

The American Indian Defense Association has been at work for about three and a half years so far, has appeared before many committees of Congress, and has an organization flung out all over the country. If it has made, as the commissioner states—I do not recall his exact language—but if it has made false statements, those statements are of record, and it should be possible for the Indian Bureau to designate them and show wherein they are false. Until such designation is given, naturally, we can not proceed to prove that they are true.

With reference to the matter of cooperating with the Indian Bureau I may say that the files of the bureau are rather heavily loaded with correspondence with the American Indian Defense Association and its branches on matters various and sundry. I do not know that that would concern this committee, as to whether we did or did not approach the bureau, but I would like simply to put in the record the fact, as an example, that there exists a file of correspondence running across about two years in the files of the commissioner, and that such correspondence was supplemented by repeated personal interviews with the Commissioner and the Secretary of the Interior, on a certain notorious abuse of power and outrage against the rights of the Zuni tribe of Indians; that no action was obtainable across that period of 2 years, or 18 months to be exact, until finally last summer when it had been decided to go into court and attorneys had been employed and paid and were

ready to file suit, action was at last obtained. Many cases of that kind can be mentioned.

I should like also to refer to the historical Bursum bill fight of 1922 and 1923, and to make this statement, that for a term of months I and those associated with me attempted to reach an agreement or understanding with the Secretary of the Interior and the Commissioner of Indian Affairs, and I may point out that not only did I talk with Mr. Burke, but I talked with him in conjunction with Theodore Hughes and that General Hugh Scott assisted in the attempt to avoid what later proved to be a violent situation in Congress. We were totally unable to make progress, and there ensued the public contest that is on record.

As to the Executive order Indian reservations, it is in the published literature and the formal legislative declarations of the American Indian Defense Association and its branches, and has been over a period of two years, that these organizations desire to obtain the validation of the Indians' vested rights in Executive order reservations.

In the hearings and debates of the committee of one hundred on Indian affairs, of which I was a member, which Commissioner Burke attended, the subject was before that advisory body of the Secretary of the Interior. The debate was somewhat extensive. A resolution was adopted. I do not recall whether it was I or Mr. Herbert Welch, president of the Indian Rights Association, who put that resolution in. I merely desire to point out that there is a long record on this subject, and we are not suddenly discovering an interest.

Senator LA FOLLETTE. Will you state to us who is really responsible for the Indian Defense Association?

Mr. COLLIER. The American Indian Defense Association is an incorporated membership body with headquarters in New York, whose president is Dr. Hayden Emerson, head of the department of public health administration of Columbia University, and whose treasurer is Robert Ingersoll Brown, of New York. There are branches, with boards of directors, in Milwaukee, San Francisco, Santa Barbara, and Los Angeles, and there is a membership distributed more or less over the whole country—I imagine in every city of the United States. The boards of directors make the policy; I am only the executive agent of those boards of directors. The transactions of the organization are public. Its finances are public and accessible to anyone at anytime.

I shall not take any more of the committee's time. I simply wanted to make this formal statement and disclaimer of what the commissioner had stated.

Coming to the issue embodied in the measures, H. R. 9133, S. 3159 and other bills, may I state this?

The American Indian Defense Association desires to see the Executive order reservations developed for oil, mineral and all other purposes. It desires to see them not kept in a locked up condition. I believe that every Indian welfare body takes the same position.

Second, the American Indian Defense Association indorses the idea that these Executive order reservations and the treaty reservations should, from their oil, gas, and mineral output, yield a revenue

to the States. So far as I know, on that issue also there will be no difference of opinion among the Indian welfare bodies and I know of no Indian who objects.

Third, speaking for the American Indian Defense Association exclusively, I would say that any measure which tends to invalidate the Indian title in the Executive order reservation will have to be resisted, particularly inasmuch as all of the results sought by the States, all of the results desired by the oil operators, all of the results legitimately desired by the Bureau of Indian Affairs, can be obtained without clouding the Indian title, such as it is or may be found to be by the courts.

We register objection to section 2 of both the House and Senate draft bills as a whole.

Senator LA FOLLETTE. Will you explain your objection to that section?

Mr. COLLIER. I will explain that by adding that we would suggest an amendment to the first section which makes intelligible our objection to section 2. That is an amendment designed to extend the taxing provisions of the act of May 29, 1924, to all Indian unallotted lands, including Executive order areas. The exact wording of that I have but do not need to place in the record.

Senator LA FOLLETTE. Perhaps it would make your statement more readily understandable if you would incorporate it.

Mr. COLLIER. Then I will read the first section as it stands:

That unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any Indians or tribes may be leased for oil and gas mining purposes in accordance with the provisions contained in the act of May 29, 1924.

The existing wording brings the Executive order reservations for leasing purposes under the leasing act for treaty lands. Now, if this proviso were added the result would be accomplished:

Provided, That production of oil and gas and other minerals on such lands may be taxed by the State in which such lands are located in all respects the same as production on unrestricted lands. The Secretary of the Interior is authorized and directed to cause to be paid the share of production tax so assessed against the royalty interests, out of the royalty rentals received by the Indians or tribe; provided, however, that such tax shall not become a lien or a charge of any kind or character against the land or property of the Indian owner or owners but only against his or their royalty receipts.

Senator BRATTON. Do I understand that that is the provision of the act of 1924?

Mr. COLLIER. That is the provision of the act of 1924 applied to treaty reservations, with the distinction that the language of the act of 1924 is lacking in clarity and makes at least remotely possible a certain unfortunate construction, the construction, namely, that the whole tax shall be paid out of the Indian royalty interests. I am sure that was not the intention of Congress. This clarifies the thing definitively and states that the Secretary of the Interior is authorized and directed to pay the Indian share of the total production tax out of royalty interest, and has the effect of authorizing the States to tax production completely, making the Indians pay their part and allowing the State to collect from the producers their part.

Senator BRATTON. The adoption of that would necessarily commit Congress to the position of recognizing that the title to these Executive order lands existed in the Indians, would it not, Mr. Collier?

Mr. COLLIER. I am inclined to think that the wording as here put would have that effect, just as this bill as it now stands would have the opposite effect. Whether it is possible to devise a scheme that will tax the total production and turn over the tax to the States without implicitly validating the Indian title is a question that I have not been able in my own mind to answer or to get answered. I can imagine that the Federal Government might possibly withhold a certain proportion of the total production and turn it over to the States, and might be able to do it constitutionally. I think it is very doubtful, however, because either the Indians have a title or they have not. If they have a title then the power of the Federal Government to take the proceeds of the land from them and give it to somebody else would obviously be questionable.

When I talked with a member of this committee the other day I was groping toward some formula that would simply leave the question of title untouched, but I myself doubt now whether it can be done under a provision that would be held constitutional. So it may be that Congress must either declare the title extinguished or nonexistent in effect, or declare by implication that the title exists.

Senator LA FOLLETTE. Is it your contention that this bill, S. 3159, as drawn would declare the title of the Indians nonexistent?

Mr. COLLIER. It would undoubtedly have that effect. An examination of sections 2 and 3, alone or together, would clearly indicate that.

Section 2, for example, deals with Indian Executive order lands exactly if they were public lands, in which the Government had absolute and exclusive title. On the public lands the Government can collect what royalty it desires, and do with that royalty what it wants to do. It is wholly within the right of Congress. Obviously the meaning of section 2 is that the Government has such a right that the Indian has no equity, or at least no vested interest. The Government is free to take it and do with it what it will.

Senator BRATTON. How do you account for the fact, then, Mr. Collier, that more than half of the income is given to the Indians?

Mr. COLLIER. That is an act of grace pure and simple. Speaking from the point of view of the legal effect, if Congress says that even 2 per cent or 1 per cent of the property can be disposed of by Congress with no reference to the Indian title, that establishes the status in law as far as Congress can do so by enactment. I think that is quite clear.

Senator BRATTON. Do you not think it would be a more accurate statement and a fairer interpretation to say that the effect of section 2 is that, in view of the complication and the doubt surrounding this title, we are going to give the Indians 62½ per cent instead of 37½ per cent?

Mr. COLLIER. Well, you are going to do that, but that giving is clearly not a recognition by Congress of an obligation to give or a legal requirement to give; it is an act of grace. In other words, the theory of section 2 is that the Indian has nothing now, and

Congress is going to give him something. That is the only theory possible under section 2; that is the only meaning.

I am not criticizing the contents of section 2, but only trying to interpret its effect upon the Indian title, which is the thing that concerns us far more than the question of the amount of royalty.

Senator BRATTON. But frankly, Mr. Collier, I do not believe the Indians have any title to the Executive order reservations. Personally I shall be very much surprised if the Supreme Court ever holds that, and it would be a very unfortunate for the Indians if a bill of this kind should be defeated and the Supreme Court were to reach that decision. Up to date one trial judge and, rumor says, two out of three of the appellate judges in the circuit court of appeals have reached that conclusion. If the Supreme Court concurs in that view do you not think it will be pretty difficult to get Congress to give the Indians something after the court has held that as a matter of law they have not a nickel of interest in it?

Mr. COLLIER. Personally I do not think it will be anymore difficult than it is now—although I should like to come to that point again. I am not attempting to argue the question of whether the Indians have a title; I am only attempting to suggest that section 2 prejudices the question.

Senator BRATTON. Your suggested amendment there not only argues that they have a title but you want us to recognize it in the bill.

Mr. COLLIER. I and our organization would want that. On the other hand, if some method could be devised of leaving the question exactly where it is, pending court decision, that also would satisfy us. As I said, I myself can not see how you can eat your cake and have it too. It looks like you have got to decide one way or the other.

Commissioner BURKE. I do not want to interrupt Mr. Collier, but I think he ought to have his attention called to the fact that practically every statute that has even been passed with reference to royalties or bonuses for oil, or with reference to the sale of timber or the sale of surplus lands, has provided, without exception, how the proceeds shall be disposed of, that they shall go into the Treasury to the credit of the tribe. That is true in practically every act.

Mr. COLLIER. Because the time is limited I am going to be forced to jump over in the discussion of the title question.

May I say further about section 3, that the effect of section 3 as it is in the two drafts—there is an amended draft, but it has not been printed; but in H. R. 9133 and S. 3159 the effect of that section is to recognize, by implication, that the permittee who obtained a permit under the ruling of Secretary Fall has a vested right. If he has, obviously it means that the Indian Executive reservations are just public lands. I am not criticizing the section; I am merely pointing out that this bill does constitute a declaration as to the nature of the title.

May I ask if the committee is going to adjourn at 12 and if this is all the time I am going to have? Because as far as I know, I am the only spokesman of the interested organizations.

Senator BRATTON. I think we shall adjourn at 12.

Senator LA FOLLETTE. But I shall be in favor of giving Mr. Collier unlimited time.

Senator BRATTON. Certainly.

Mr. COLLIER. In that event I shall not attempt to develop my criticism of the bill in detail, but shall say this much about the question of the Indian title in the Executive order reservations, which is the looming issue as we see it.

First, as to the effect of declaring that there is no Indian title, that the Indian has no vested interest. As to the effect of such a declaration it forever establishes the law—or such a finding by the courts, in the event a finding of that kind is made by the courts. Thereafter the Indians will have no legal right to the timber, to the water power, to the coal or the oil or even the soil values, not even to the sagebrush: they will have nothing but a permissive right to occupy the land until such time as they are put off—by whom? By the administration. Not by Congress. It is in the power of the administration, without coming to Congress, at any time, by proclamation, to turn the Indians off from any of the Executive order area that has not been allotted, and to destroy whatever legal right—of course, under these circumstances they do not have any legal right, but to turn them off and destroy whatever stake they have got.

In this connection may I say that in talking with different members of Congress and other people I have found that there is an idea in the background of many people's minds that when once the Indian title to a reservation is recognized, as by treaty, that immobilizes the reservation; the boundaries can not be changed, the reservation can not be reduced or done away with.

It is perfectly evident that any scheme that would fix to eternity the boundaries of the Indian reservations of whatever character as they now exist would be an impracticable scheme. As a matter of fact, had that been the situation as regards treaty reservations, that they could not be reduced or readjusted with the changing population and the changing needs of the Indians the whole map of the United States would have been a different map to-day. All down the years you find that the treaty reservations have been again and again and again reduced, turned over for homesteading, turned back into the public lands, or sold at public auction. The difference between the procedure under the Executive order reservation, if the Indian be deemed to have no title and the procedure with the treaty reservation is simply this, that when the time comes to readjust a treaty reservation a certain procedure has to be followed.

In the first place, in nearly every case the consent of Congress is requisite. Usually the content of the tribal council is requisite, and the Indian must be compensated by the United States Government for the property that it has taken away from him. Reductions can be effected, and have been effected consecutively down the years. To recognize that the Indian has a vested right or a qualified title in a reservation does not immobilize that reservation and fix its boundaries for one year longer than Congress desires. Therefore, to establish that the Indian has a vested right in the Executive order reservation land will not have the effect of immobilizing those reservations or fixing their boundaries any longer than Con-

gress desires. It will simply insure that it is Congress which will decide and that the Indian will be compensated when his area is reduced.

Under the theory that the Executive order reservation represents no title in the Indian and that the Executive can reduce or abolish it when he gets ready, through proclamation, without coming to Congress and without compensating the Indian who is the beneficiary, if the Indians are going to get compensation for areas taken from them it is the United States Government that pays the compensation, usually out of the purchase price for which the lands are turned over to the white people are sold. The States do not get the benefit. Nobody gets the benefit but the United States Treasury, which is relieved of having to pay the Indians compensation, and the administrative bureau, which will acquire an enormously increased discretionary power over 23,000,000 acres of Indian land.

If the Indian title be held to be invalid in the Executive order reservations, if there be definitively placed in the Executive the power to turn them over when the Executive gets ready, to turn them back into the public lands without coming to Congress, we simply have added enormously to the already inordinate discretionary power of the Executive; which means in theory the President, but at the most the Department of the Interior and really the Bureau of Indian Affairs.

Senator BRATTON. Are you keeping in mind, Mr. Collier, the history of how these lands were originally set aside?

Mr. COLLIER. I am coming to that in the few remaining minutes, Mr. Chairman.

As a matter of fact, we can only see this thing in retrospective view. The treaty power was ended in March, 1871. Prior to that time the typical adjustment between the Government and the tribes was an adjustment by treaty. The main element in that adjustment was often the establishment of a treaty reservation, though there were other considerations usually.

With the ending of the treaty-making power adjustment by the method of treaty became impossible. At that time, in 1871, most of the adjustments between the United States Government and the tribes had not been completed. The bulk of the reservation area had not been created. The whole process of legal and equitable adjustment between the Government and the Indian tribes was only one-third finished.

What was done after 1871? The thing was done which was the easy, legal, and obvious thing to do. Where heretofore a treaty reservation had been created, and created with full knowledge that it could be reduced if necessary—and it was reduced when necessary—the Executive now created the reservation by Executive order. In some instances Congress created a reservation by congressional act.

Granted that it is in the power of the Executive to reduce those reservation areas, it is also in the power of Congress to reduce the reservation area, so far as a title was not by implication or has not through the lapse of time vested in the Indians.

The statement has been made that the Executive has acted, as it were, outside the law in creating these reservations. That is an

extraordinary statement, in view of legal history. Here is the official compilation, Kappler's Indian Laws and Treaties, volume 3, page 692. Speaking of the power of the Executive to create reservations from the public domain :

The authority of the President to create Executive order reservations from the public domain * * * by long and uninterrupted usage has never been denied either legislatively or judicially, but, on the contrary, has been legislatively and judicially recognized. * * * The courts have, from the early days of the Republic, recognized, sustained, and upheld this power.

So it went until 1919, when Congress, recognizing that it was a power that had been used, and had been used lawfully, said, "Hereafter it shall not be used." But in the act taking away from the Executive the power to create reservations Congress did not nullify the antecedent acts of the Executive in creating the reservations. There was no such idea contemplated, and indeed it was not possible.

I might say that Attorney General Stone argues that at length in his brief, although there are facts of tremendous importance bearing on the legal points that apparently were not known to him when he wrote the brief, some of which I will mention if I have time.

Now, we find down the years the following as some of the things that Congress has done indicating its conception of the nature of the Indian title in Executive order reservations.

In the first place, in 1887, Congress passed the general allotment act, and made it broadly applicable to Executive order as well as treaty lands and all Indian lands held in trust. The allotment act placed in the hands of the administration the power to proceed to take lands and, by allotment, vest that degree of title that is represented in any Indian. As a matter of fact, great areas have been allotted. Whole Executive order reservations have been allotted, and in that way the title has, as we have supposed, passed to the Indians.

Congress assumed an identity in the nature of the tenure as between treaty and Executive order reservations, and made the allotment apply without discrimination.

Now, Congress down the years from the early seventies has been appropriating money, running into the tens of millions, for expenditures on roads, irrigation, reclamation, and innumerable projects, all connected with the Executive order reservations. Those were gratuity appropriations. But in 1914 Congress made all of those appropriations for irrigation and reclamation into reimbursable debts, by a peculiar retrospective law which says that even expenditures made in gratuity form heretofore made on irrigation and reclamation shall become a lien on the Indian land. That lien became operative against the Executive order reservations, stands against them, and passes down with the allotted land and ultimately passes on with the title.

The presumption in that act of 1914 was, clearly, that the Executive reservation was on a parity with the treaty reservation, and that an expenditure by Congress for the benefit of the tribe could be made a lien on the land and was not made a lien on the United States Treasury.

We find that through the whole process of time until now, and this year Congress has treated wealth produced by the Executive order reservations—for example, the income from timber, the income from the leasing of areas of land for grazing, and so on—as income not to be turned into the general Treasury but to be delivered in toto to the Indians. We have at this moment the condition that on Executive order reservations in Arizona, for example, the revenue from timber cut on the Executive order reservation not turned into the general Treasury on any theory that they are public lands, but turned into the Indian tribal fund on the theory that they are Indian reservations. But that revenue is entirely supporting the operations of the Bureau of Indian Affairs itself upon these reservations.

Executive order land has been sold, as at Yuma, Calif. What has been done with the proceeds? Have they been turned into the general Treasury? No. They have been turned into the Indian Office, uniformly, to be used for reclamation, irrigation, support of civilization, and all those purposes.

In other words, Congress has made no distinction. There must have been a thousand separate acts of Congress since 1871 dealing with the Executive order reservations, their allotment, disposal of royalty interests accruing from them, timber, grazing, selling surplus areas, and so on, and not one of those enactments indicates a policy differing in any manner from the policy toward treaty reservations.

The reason why it becomes necessary to argue the question of title and the probable holding of the Supreme Court on that subject, if it ever gets to the Supreme Court, is that apparently this committee has got to construe the law, and apparently it is going to be difficult, perhaps impossible, to pass a law authorizing the development of these reservations without adopting a theory as to the nature of the title. It will be desirable to waive the question, but it apparently can not be waived. Therefore it has to be argued.

Senator BRATTON. Mr. Collier, I understand that Congress has recognized these Executive order reservations, set apart by the President from time to time. Do you know of any act of Congress authorizing the President to create Executive order reservations, granting the power in advance?

Mr. COLLIER. There is no specific act, but there is undoubtedly the recognition of it in the facts which I have given, that the Executive was allowed to continue constantly making these reservations, and all of the other acts of Congress affecting Indian land to which there was a title were made applicable to these reservations. And then Congress did in 1919 say, "The Executive is going a little fast and loose on this, and we will stop him." But they did not abrogate any of his previous acts.

Senator BRATTON. But when he began to set aside these Executive order reservations he had no authority to do so?

Mr. COLLIER. Well, he had been setting aside reservations under similar conditions for non-Indian uses since the thirties.

There is another very strong argument on this. Congress ended the treaty-making power. Now, Congress knew—the whole world knew—that the reservations had not been established yet. There were these tribes roaming the prairie still, roaming the Northwest,

the greater part of New Mexico and the whole of Arizona except in little fragments of the Navajo Reservation.

Congress did not adopt some other method of effectuating those adjustments; the Executive proceeded to make them. He necessarily reported them to Congress year by year, and Congress accepted the Executive procedure as a means of adjustment in place of the treaty adjustment that could not longer be carried out. It was satisfactory to Congress, and Congress validated those acts of the Executive by making the subsequent acts applicable and by construing that the proceeds from these reservations belonged to the Indians, and so on.

The main point is, of course, that the Executive has repeatedly reduced Executive order reservations. The Executive has altered boundaries, and there are cases where he has wiped out whole areas and turned them back into the public domain. It is stated that, the Executive having done that, he must have proceeded on the theory that the Indian had no title.

You see, you have a conflict here of two lines of argument. The Attorney General points out that the right of the Executive to diminish an Executive order area has not been adjudicated, nor has it been even inferentially passed on and approved or disapproved by act of Congress.

The situation has been peculiar. Naturally the Executive was not going to contest his own act. The Indians were not in a position to contest. Therefore it has never been adjudicated. An adjudication of that one point by the courts might, by implication, settle the whole question. But there has never been an adjudication, according to Attorney General Stone.

Now, note the thing on the moral side. These Indian tribes, absolutely believing that they were getting reservations that were permanent, have gone in and lived on the reservations. For fifty years they have been living there. Many of the reservations are the ancestral homes of the tribes. Every act of the Government, of Congress, and of the Executive has been in the nature of a confirmation: "You are here in your home, and you have a vested right." They have seen the timber cut. They have seen the funds coming back to them. They have seen allotments made, and they knew that the allotment passed the title to them. If it should turn out that the Indian has no vested right but can be turned off just like grazing cattle at the will of the Executive the effect will be this. Either Congress will have to proceed to validate the title or else Congress will have to allow a perfectly awful condition to stand: namely, that the Indians since 1871 have been practically swindled by Congress, unconsciously; by the Executive, unconsciously—unintentional, but in effect. And if all of these rights which they believed had been established by agreement and through occupancy are null and void, and if they are trespassers, or can be made trespassers at any moment and they are without any authority to go into court and contest the case, you see you have created a gigantic situation affecting two-thirds of the whole allotted reservation area.

That is why our organization, most reluctantly, has been driven into this position of seeking to secure an amendment of the act. Reluctantly, because we recognize the tremendous need of opening these reservations for development. Reluctantly, because we do not

want to seem to be throwing a monkey wrench into a plan that has been devised in all honesty of spirit and good intention by pretty nearly the whole group of western organizations. And yet there is this great underlying question.

As I have stated, if the Indian title be recognized it does not mean that this Indian property is to remain eternally locked up. It can be thrown open to white use, just the same as the treaty reservation, when Congress gets ready. Nobody can doubt the power of Congress to do it, only there will have to be compensation to the Indians.

Second, if the tax provisions applicable to unallotted treaty lands under the law of May 29, 1924, be extended to Executive order reservations, with the language clarified as suggested, the effect will be, not to diminish but to increase the revenue to the States from the oil development on the Executive order reservations, to increase it very materially, particularly during these first years when the exploratory leases are being opened up which bring, as they necessarily do, a small royalty.

That is a matter of mathematics. You have only got to take your ratios and put them in your question. And what are the ratios? It is just a matter of arithmetic. By the plan of taxing only the Indian royalty of $37\frac{1}{2}$ per cent and leaving the producers untaxed, if the exploratory leases bring 5 per cent royalty the State would get 1.875 per cent of the total production. If the leases average as high as $12\frac{1}{2}$ per cent royalty, as they might after the exploration phase was ended, then by taxing the $37\frac{1}{2}$ per cent of Indian royalty and leaving the producer untaxed the State would get 4.687 per cent of the value of the total production.

Senator BRATTON. How do you reach the conclusion, Mr. Collier, that the producer is untaxed? I am interested in that.

Mr. COLLIER. That was discussed at some length in the House hearings, and I had hoped that those hearings would be before your committee.

Senator BRATTON. We haven't them; no.

Mr. COLLIER. I will read a portion of them which I have:

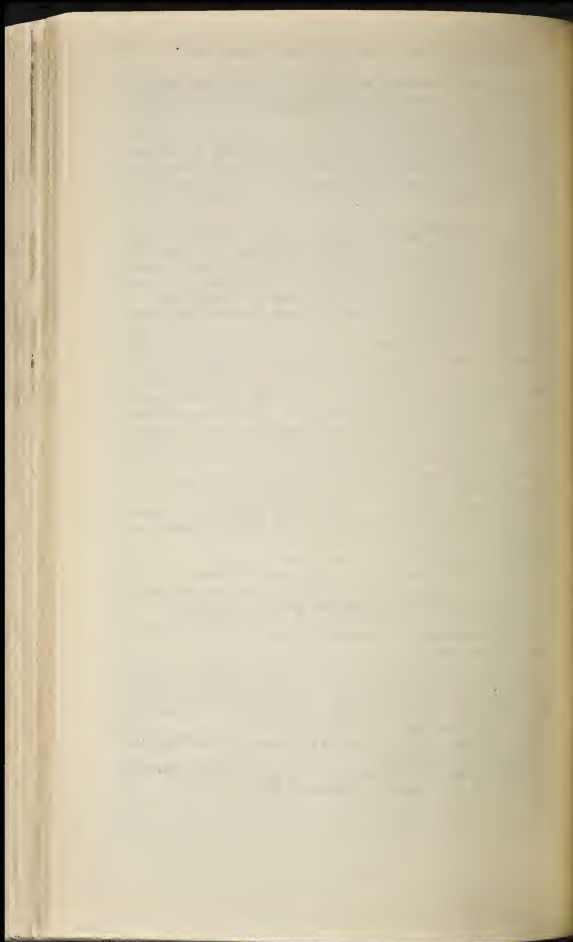
Mr. HAYDEN. The Supreme Court has passed on the taxation question specifically and directly in the Oklahoma case, that a State can not levy a tax on oil from Indian lands without the consent of the United States.

Mr. Hayden extended his remarks on that, and everybody concurred. He said further:

Oklahoma levied a production tax on oil and sought to collect it, and the money was collected and impounded, and the Supreme Court said: "This oil came out of untaxed Indian oil land, and the land itself could not be taxed and the production could not be taxed." So the Supreme Court decided. Then we passed this subsequent act that permitted a tax to be levied. It could not be done without the consent of the United States.

Senator BRATTON. There is a call of the Senate. We will adjourn now until tomorrow morning.

(Whereupon, at 12.10 o'clock p. m., the subcommittee adjourned until 10 o'clock a. m., tomorrow, Saturday, March 6, 1926.)



DEVELOPMENT OF OIL AND GAS MINING LEASES ON INDIAN RESERVATIONS

TUESDAY, MARCH 9, 1926

UNITED STATES SENATE SUBCOMMITTEE ON INDIAN AFFAIRS,

Washington, D. C.

The subcommittee met, pursuant to the call of the chairman, at 10 o'clock a. m., Hon. Samuel G. Bratton, presiding.

Present: Senator Bratton (chairman of subcommittee), Cameron, and La Follette.

Senator BRATTON (chairman of subcommittee). Gentlemen, the committee will come to order. Assistant Secretary Edwards of the Interior Department is present. Mr. Secretary, if you are prepared to give your views we would be glad to hear from you now.

STATEMENT OF HON. JOHN H. EDWARDS, ASSISTANT SECRETARY OF THE INTERIOR

Senator BRATTON. Mr. Secretary, you are familiar, of course, with the measure that is under consideration; that contained in S. 3159. In your own way, Mr. Secretary, will you give us the benefit of your views?

Assistant Secretary EDWARDS. My attention has been called to the language of section 2, that $37\frac{1}{2}$ per cent shall be paid in lieu of taxes to the State within the boundaries of which the leased land or deposits are located: that perhaps that language is susceptible to the meaning that other than Indians are exempt from taxation. I would suggest in order that all doubt be removed that the bill be amended by showing that the $37\frac{1}{2}$ per cent is in lieu of all taxes that may be charged against the Indians; that is, Indians who would receive $62\frac{1}{2}$ per cent under the same section be deposited in the Treasury of the United States. If that language is susceptible of that interpretation perhaps it ought to be changed, because surely no one except the Indians should be exempt.

Senator BRATTON. Mr. Secretary, it was never thought by me that the producer or any one else should be exempt. It was never intended to exempt any one else. Suppose that language were stricken from the bill, $37\frac{1}{2}$ per cent to the State and $62\frac{1}{2}$ per cent to the Indians, and say nothing with reference to taxes or in lieu of taxes.

Assistant Secretary EDWARDS. In my judgment, that would not change the tax feature, because under existing law the Indians' property would not be subject to taxes anyway. Why that language crept in there is not just exactly plain to me at the present moment because the property is not subject to taxation.

Senator BRATTON. The first time that the language appeared, Mr. Secretary, was in a bill proposed by the department and attached to Senate bill 1722, which was the Jones bill. In making a report upon that bill the department criticized it and tendered a proposed bill dealing with the subject, and that language appeared in that bill for the first time.

Assistant Secretary EDWARDS. I saw the report made by the department and it did not occur to me at that time that the language was susceptible to the interpretation that it would relieve anybody from taxation except Indians, and I am impressed with the belief that even if passed in its present form that would be a fair interpretation of the language, but I am saying that in order to remove any doubt about the matter, in my judgment it would be advisable to amend it so as to make the interpretation and the meaning absolutely clear.

As to the 62½ per cent to be deposited in the Treasury of the United States to the credit of the Indians and 37½ per cent to go to the State, on condition that the State use the 37½ per cent for the purposes stated in this section, I think there is nothing sacred about that division. In other words, it is a matter for Congress to determine whether it shall be 62½ per cent and 37½ per cent, or whether the Indians shall receive 100 per cent, because that is a matter exclusively within the control of Congress.

I understand that the fee to Executive order Indian reservation lands is in the United States subject to the use and occupancy of the Indians and that Congress has always legislated on the subject and has fixed the rights of the Indians on Executive order Indian reservations.

Now, if Congress continues that practice, then it will be exclusively for Congress to say whether a percentage of 62½ and 37½ is a correct division. Of course, if it should be held—and perhaps it may be contended by some—that the Indians have a vested right in the oils and minerals of Executive order Indian reservation lands; if the Indians have, as a matter of law, a vested right in those minerals, then any division would be manifestly unfair, because the Indians own all of the oils and minerals.

Senator CAMERON. Mr. Secretary, how do you feel on that question? What is your opinion as to an Executive Order?

Assistant Secretary EDWARDS. Well, perhaps I can answer that, Senator, by going back a little.

Senator CAMERON. All right. Let us have your answer.

Assistant Secretary EDWARDS. I went to the Department of the Interior about the middle of April, 1923, as solicitor. Sometime after I went to the department the question arose as to whether or not the leasing act of February, 1920, was applicable to Executive order lands. That question came to the solicitor's office and after a consideration of the question we of the solicitor's office came to the conclusion that the leasing act of February, 1920, had no application to Executive order lands. The department at that time was taking the view that the leasing law did apply.

The solicitor's opinion was written some months before the Attorney General rendered an opinion on the question. The question was finally submitted to the Attorney General. But the depart-

ment in this Solicitor's opinion had come to the conclusion before the Attorney General some months before, as shown by that opinion, that the leasing act did not apply.

It is a question of law on which minds will differ as to just what is the extent of the rights of the Indians to the lands and to the minerals in the lands. My opinion, if that is what you want, is that the fee is in the United States.

Senator CAMERON. That is the title to the land?

Assistant Secretary Edwards. The title to the land is in the United States.

Senator CAMERON. Even after an Executive order has been issued?

Assistant Secretary EDWARDS. Yes. That is true of all reservations, so far as that is concerned. They stand all on an equality so far as the fee is concerned; but that the Indians have the right to use and occupancy.

Congress many times has dealt with Executive order Indian reservations. Congress has legislated on the subject, has taken away the Executive order Indian reservation lands from the Indians and restored those lands to the public domain. In most cases in doing that it has in a way recognized the rights of the Indians by some appropriations for the Indians. I think that legislation has not been uniform in that respect, however; but my opinion is that the matter is exclusively for Congress; that Congress has the right to legislate; at least, Congress has always exercised the right to legislate so far as Executive order Indian reservations lands are concerned.

I may say that the department has recently submitted that very question which you have asked me to the Attorney General for an opinion.

Senator CAMERON. He has not rendered an opinion yet?

Assistant Secretary EDWARDS. No; that opinion has not come over, because it was just last week that the question was submitted. The Attorney General discussed the question somewhat in his opinion of May, 1924, on whether or not the leasing law applies, but that discussion is incidental to the determination of whether or not the leasing law applies.

Senator LA FOLLETTE. Does it not look towards the recognition of the vested right of the Indians to the Executive order reservation lands?

Assistant Secretary EDWARDS. Yes; I agree.

Senator LA FOLLETTE. And if I gather correctly from your statement of your impression, you look upon this question as being a very controverted question, do you not?

Assistant Secretary EDWARDS. Yes.

Senator LA FOLLETTE. And is that your personal opinion, that the Indians have a vested right or that they have not?

Assistant Secretary EDWARDS. My personal opinion is that they do not have a vested right, but they have a moral and equitable right that Congress has always recognized. That is my viewpoint. My personal viewpoint is that they do not have a vested right because if they had a vested right then it would be manifestly unfair to take any part of it away from them.

Senator BRATTON. Mr. Secretary, you say they have a moral and equitable right. Is that confined to use and occupancy of the land for their ordinary vocation?

Assistant Secretary EDWARDS. Heretofore when Congress has recognized any rights in the Indians it has been recognized as to use and occupancy. Personally I do not recall that the question has ever been up as to the rights of the Indians in the oils beyond the use and occupancy of the surface of the reservation.

Senator LA FOLLETTE. Did I not understand you to say that in some instances where lands have been taken away from the Indians in these Executive order reservations that Congress has compensated them for that?

Assistant Secretary EDWARDS. Yes.

Senator LA FOLLETTE. It would tend to indicate that Congress believed that they had at least a moral right and perhaps a vested right?

Assistant Secretary EDWARDS. Yes. That is the reason I say that because Congress has always recognized this right to deal with Executive order Indian reservations and has done this thing of which you speak, that is at least a recognition that there is some sort of a moral or equitable right in the Indians; but, so far as I know, that has never been discussed with reference to the oil; it has always been with reference to the surface or use and occupancy.

Senator BRATTON. Mr. Secretary, I have been informed that Governor Hagerman, the commissioner to the Navajo Indians, says that these Navajos are perfectly willing to accept 50 per cent of this royalty, 12½ per cent less than this bill gives. Do you know whether that is true or not?

Assistant Secretary EDWARDS. I do not know. I am told that Governor Hagerman is in Washington at the present time and that he came in some time yesterday. I have not yet seen him, although I am told that he has been and is in the department.

Senator BRATTON. We will try and get him here. I think at a tribal conference the Navajo Indians have reached the conclusion that in view of the doubt concerning their title to these lands and the urgent necessity for immediate development they are willing to take 50 per cent of the royalty and be satisfied with that. If Governor Hagerman is here we will try and have him testify.

Senator CAMERON. Mr. Secretary, the department does not construe the present Leasing Law as applicable to the Executive order Indian reservations?

Assistant Secretary EDWARDS. No, sir; and it has not since some time prior to May, 1924. The department ceased issuing permits under the recent law some months before the Attorney General decided the question because the solicitor of the department had said that he did not think the leasing law applied. That, perhaps, will explain why so many permits were pending when the Attorney General's opinion was rendered, because the department had suspended the issuance of permits some months before the Attorney General decided the question.

Senator BRATTON. And when the Federal court of Utah held otherwise the Department still followed the opinion of the Attorney General and the Solicitor?

Assistant Secretary EDWARDS. The department is still following the viewpoint that the leasing law does not apply.

Senator BRATTON. Mr. Secretary, do you understand that this bill necessarily commits Congress to either position respecting the title to the Executive order lands; that is, whether the title is vested in the United States or in the Indians?

Assistant Secretary EDWARDS. My opinion would be that if this bill were passed in this form, or any other division, that if the rights of the Indians are vested rights it would have no bearing on the question at all and would not enter into a consideration of that question.

Senator LA FOLLETTE. Well, if this is a compromised measure, as it has been described by Commissioner Burke, between those who regard the rights of the Indians as being vested and those who do not regard the Indians as having anything but a right as a matter of grace from Congress, would it not, in your opinion, tend to put Congress on record with regard to this very important question?

Assistant Secretary EDWARDS. No, Senator, because from my viewpoint Congress has always exercised the right to deal with Executive order Indian reservations and the right of the Indians in those reservations.

Senator CAMERON. In other words, Congress could set aside any Executive order of the President? Is that it?

Assistant Secretary EDWARDS. Yes. Of course, the President, you understand, since 1919 has been without authority to create Executive orders. I understand that Congress has followed that practice.

Senator BRATTON. Mr. Secretary, one or two persons who appeared before the committee expressed the belief that this bill does commit Congress to the position that the title of these lands is vested in the United States. I think those same persons have said that they can see no way by which development can be had and still avoid committing Congress one way or the other upon the subject. You say that you do not think the bill commits Congress upon that question. Can you think of any way by which Congress can be less committed upon the subject and still get development? What we want is development of these resources and what the Indians want is development. Personally I have been unable to think of any plan which would avoid the question any more than it has been avoided in this bill and still bring about development.

Assistant Secretary EDWARDS. There can be no development of oil on Executive order Indian reservations without some legislation.

Senator BRATTON. If there could be, we would not be struggling with this question.

Assistant Secretary EDWARDS. Of course, I want to modify that. If the question now pending in the Congress should be settled to the effect that the leasing law applies, then under that decision there would be development.

Senator BRATTON. And the Indians would not get a dime.

Assistant Secretary EDWARDS. Under the leasing law the Indians would get no part of it. If the courts should hold that the leasing law applies, in the absence of some modifying legislation the Indians would get no part of the oils.

Senator BRATTON. And if it should later be held that the title to these lands is actually vested in the Indians, it would be a matter of adjustment between the Government and the Indians of this 37½ per cent, because, unquestionably, they would be entitled an adjustment on that score.

Assistant Secretary EDWARDS. Yes.

Senator BRATTON. Do you thing of any other changes that could be made in the bill, Mr. Secretary, except the language you have indicated respecting the subject of taxation?

Assistant Secretary EDWARDS. I think the figures show that there are about 20 permittees. That is not disclosed by the bill, but it is my understanding that there are about 20 outstanding permittees. The language of this bill is the language of the leasing act. In other words, under the bill they are given practically the same rights that they would have acquired had their permits been valid permits and they had discovered oil and been granted leases.

In answer to your question, I would say that the only amendment that I would suggest would be this—to make certain and definite beyond doubt the question of taxation. I would suggest that that be amended so that it be made very plain that this 37½ per cent is for the relief of the Indians against any and all taxation and not for the relief of any operator or person other than an Indian.

So far as the 62½ per cent and the 37½ per cent are concerned, I can but repeat what I have already said—that, in my judgment, there is nothing sacred in those figures. If they are not satisfactory to Congress, Congress can easily change them by giving the Indians a greater per cent or a lesser per cent. My understanding of this was—and it is just a general understanding—that it was a sort of a compromise figure, and just who suggested 62½ per cent and 37½ per cent I do not know. I think that when my attention was first called to it there were a number of bills pending before the Senate, probably three bills, and if I am not in error these percentages were used in those bills, and those bills were introduced before the department was called upon for any opinion or recommendation.

Senator BRATTON. Mr. Secretary, in the law now governing treaty reservations the Indians get 52½ per cent, do they not, 10 per cent going to the General Treasury and 37½ per cent to the State? So that under this bill the Indians get 10 per cent more than they do under the law now governing treaty reservations.

Assistant Secretary EDWARDS. Yes; that is true, because under this bill 62½ per cent goes absolutely to the Indians, goes into the Treasury for the Indians, and the 37½ per cent goes for the benefit of the Indians in the way of promotion of education and for the construction of roads.

Senator BRATTON. But the outright thing is 10 per cent greater under this bill than it is under the law governing treaty reservations.

Assistant Secretary EDWARDS. That is my recollection, although I have not the law directly in mind now.

Senator BRATTON. Can you think of anything further now, Mr. Secretary?

Assistant Secretary EDWARDS. I want to call attention to the language in line 5 on page 4 where it speaks of the leases to the permittees being upon a royalty of 5 per cent. That, of course, applies only

to such leases as would be awarded to the permittees. Under the leasing act and under a permit under that act the right is given, if I recall the statute correctly, to explore the equivalent of four sections of land; that is, the equivalent in acreage.

If discovery of oil is made then the lease is for one fourth of that which would be 640 acres, if there are 640 acres available, and it might be as low as 160 acres. The greatest acreage would be 640 acres for a lease and the 5 per cent applies to that. I just make that statement by way of explanation. That would be a very inconsiderable amount of land upon which the 5 per cent would apply when compared with all of it because if 20 leases were granted the greatest acreage to which it could apply would be 20 times 640.

Senator BRATTON. Mr. Secretary, I direct your attention to Senate bill 1722 introduced by Senator Jones of New Mexico which was referred to your department and called for the report that we referred to. In the first section of his bill he made the general leasing act of February 25, 1920, applicable to Executive order reservations. Then in the second section of his bill he provided as follows:

All persons, associations, and corporations who have heretofore applied for permits or leases upon any of the deposits or lands described in section 1 hereof may have their applications reinstated in the order of original filing; or, if they have heretofore received permits or leases upon any such deposits or lands, then they may have the permits or leases heretofore issued to them confirmed and extended for a full term, commencing with the date of confirmation, by the Secretary of the Interior, by making and filing application for such reinstatement or confirmation in the proper district land office at any time within 90 days next after the date of this act takes effect, notwithstanding any final rejection of such former application or cancellation.

A number of those applicants and permittees have registered a vigorous desire that such a provision be incorporated in this measure. Are you in a position to reflect the attitude of the department on that subject?

Assistant Secretary EDWARDS. The department expressed its attitude in its report to the Senate committee by saying that the department thought those who had received permits should be included in the legislation, but those who were merely applicants for permits—as I remember the number there were some four hundred of them—should be excluded.

The reason for that view is this: The department until some time prior to May, 1924, recognized the leasing law as applicable, and the department issued some twenty permits. Those who received those permits received them under the impression that the law did apply and they in good faith invested money, expended money, in an effort to develop oil and gas, and it would seem to be the part of justice to recognize those who have expended money and those who acted in good faith under the permits issued in the belief that the law applied. But no permits were issued to some four hundred who were merely applicants for permits, and when the Attorney General held that the law did not apply it would not seem that they had any equity in the situation; they were merely applicants for permits.

Of course, if some of those who were merely applicants had done something in the way of the expenditure of money, had done something that would perhaps take them out of that class and put them

in the same class with the permittees, there would be no objection to including those who had done those things, but I apprehend that very, very few indeed, did everything; they had merely filed applications.

Senator BRATTON. With the suggestions that you have made, Mr. Secretary, has the bill the department's approval?

Assistant Secretary EDWARDS. Yes: as expressed in a report. I have forgotten just what bill the report was made on.

Senator BRATTON. It was on Senate bill 1722.

Assistant Secretary EDWARDS. Well, whatever the number of the bill was the department expressed its opinion and the department, so far as I know, would probably not add to or take anything from that report at this particular time, except to suggest that the language as to taxation be made beyond dispute and beyond doubt.

Senator BRATTON. Mr. Secretary, we thank you.

Now, Mr. Collier, I think we can finish with your statement by noon.

STATEMENT OF JOHN COLLIER, MILL VALLEY, CALIF., EXECUTIVE SECRETARY, AMERICAN INDIAN DEFENSE ASSOCIATION (INC.), NEW YORK AND SAN FRANCISCO—Resumed

Mr. COLLIER. Mr. Chairman, I want to resume at the point where I suspended the other day, but may I ask first about this leasing law affecting treaty reservations? Has the law as of May 29, 1924, been subsequently amended? I refer to the act affecting the leasing of oil on treaty reservations.

Senator LA FOLLETTE. Secretary Edwards can answer that.

Mr. COLLIER. Has the act that deals with the oil development on treaty reservations been subsequently amended?

Assistant Secretary EDWARDS. Not to my knowledge, Mr. Collier.

Mr. COLLIER. I am sure it has not because all of these new bills are based on it as of that date. Of course, that law makes no provisions for the distribution of royalties. It deals with treaty reservations, and the assumption there is that the royalties go into the tribal funds after one deduction in May, namely, the State tax on production, if there be a State tax.

I think there was some confusion between the law affecting public lands and the leasing law affecting treaty reservations. The operations in the treaty area of the Navajos, for example, are under the law of May, 1924.

Assistant Secretary EDWARDS. Those leases are made by public auction.

Mr. COLLIER. The royalties go to the tribal funds except as there might be tax deductions which are allowed in the act in the event that those States have production taxes.

Now, Mr. Chairman, at the time of the suspension of my testimony I was quoting from the record of the House subcommittee on this subject as to whether or not in the absence of specific affirmative provision the oil production on Indian lands could be taxed, and I had read into the record the words of Mr. Hayden and Commissioner Burke quoting the decision of the Supreme Court on the Oklahoma case. That is in the record now.

Mr. Hayden's words, which were concurred in by all there present, were that the act of May, 1924, contains a provision authorizing a production tax to be levied by the States against a producer and receiver of royalties. That was put in because otherwise there could not be a tax for production, and in the absence of consent by Congress there could not be any taxation by the States. The States could tax the apparatus brought in for oil development, but the Supreme Court decision related to the oil which was considered to be part of the land and was held to be tax exempt, even after the State of Oklahoma had acted and impounded money which it proposed to pay back. You are all lawyers and I am not and you can develop that reason as to whether or not it will apply to Executive order reservations. I think unquestionably it will. The Government must extend to the State the privilege of taxation before the State can act.

Senator BRATTON. There can be no doubt as to that.

Mr. COLLIER. So that if the measure should stand as it is now, no matter what the change of wording in section 2, under whatever wording, your tax would be exempt, whether the words "in lieu of taxation" were left in or taken out it would not affect the status of the producer; it would not affect the status of the Indians, inasmuch as the statute provides that 37½ per cent of the royalties shall be transferred to the State, which really is a gift if not a tax. If it were a tax it would be a very doubtful constitutional situation, whereas a gift would not be.

Senator BRATTON. Do you mean that in this bill we could not give authority to the State to tax the producer?

Mr. COLLIER. Yes; you could extend and that is what we are recommending, that the terms of the treaty reservation act, as far as taxation is concerned, be extended to the Executive order lands and all other Indian lands, allowing the State to levy a production tax divided between the producer and the customer, and authorizing and directing the Secretary of the Interior to pay a royalty share on the royalty revenue, leaving the State to collect from the producer where the State collects from all Indian lands. That means a slight clarification of the existing act for treaty reservations. That language is obscure and has been diversely interpreted, although its intention is to effect a rate of taxation based on the rate which the State places on production of Indian lands.

Now, I desire to speak for three or four minutes in an effort to clarify this question of the nature of title. As Secretary Edwards stated, the fee to all Indian reservations is in the United States. That is true whether it be a treaty or an Executive order reservation. The Indian vested interest such as it is is an anomalous title vested interest. It is a qualified vested interest, the underlying fee being in the United States.

The first great case, in which that was decided by the courts and adjudicated by the Supreme Court, most all of you doubtless remember, was the Cherokee case, which established the foundations of our Indian law. That was a treaty reservation. The Cherokee removed across the Mississippi in Georgia, Tennessee, and North Carolina. Congress arbitrarily decreed a compensation. That compensation had no relation to the assumed value of the land. There

were vast timber resources, there were minerals, there were water power resources, and there were surface values. Congress decreed an arbitrary figure really as an act of grace. The Supreme Court upheld the action of Congress. That was the opinion of that declaration through which the Supreme Court has established that Congress has a plenary power. So that the acts of Congress to which Secretary Edwards has referred dealing with Executive order reservations are similar in law as in fact to the actions of Congress dealing with treaty reservations. That is, Congress may decree such compensation as it deems appropriate when it reduces the area of a treaty reservation or when it reduces the area of an Executive order reservation. There is just this difference, that probably Congress could not simply wipe out a treaty reservation. At least, if the Indian were thereafter allowed to go into the Court of Claims, he could attempt to collect compensation or damages. That is certain regarding treaty reservations; and, according to the line of reasoning we adhere to it is probably applicable to Executive order reservations.

The important thing to get over is this, that treaty reservations have been reduced in area very much more frequently than have Executive order reservations. The treaty reservation is not a fixed boundary. The quantitative reduction in area of treaty reservations is more than five-fold that which has taken place in Executive order reservations. The earlier treaty reservations were to the East. The Executive order reservations came along after 1871 and the pressure has not been so intense.

The only point of importance is that it is within the power of Congress, through a variety of devices, all of which are direct and legal, to reduce the area of a treaty reservation at will. I might mention some of the methods. The allotment and the granting of a fee patent automatically has effect. Surplus lands if a part of the treaty reservation may be sold with the consent of the tribe or without the consent of the tribe and Congress may reduce the area compensation virtually at will. The power is in Congress. The distinction between that statute and the statute on an Executive order reservation, if we think the Executive order reservation represents no vested interest, not even as much as a treaty, is this: That with an Executive order reservation it is not Congress which acts to throw the timber, let us say, out of the reservation, to throw the mineral resources out, to transfer the water power out, to reduce the reservation; it is the Executive who acts and he does not come to Congress. The power is in the Executive, a very important difference. Politically it is a difference of use in interest as to whether it is Congress that shall have the discretion or the Department of the Interior.

The other distinction is this, that by the theory that the Indians have no vested right but only a moral right and that a right to the surface, then the Indian can not go into the court either to resist eviction—he can not do that anyhow—but he can not go into court to collect compensation. All he can do is to beg Congress as an act of gratuity to do something for him. So the difference to the Indian is momentous there. The State is interested in getting the reservations developed and ultimately getting those reservations

completely under taxation, and it should be the interest of every Indian and well-wisher of the Indian also.

The difference to the State is selfish and as viewed from the point of the State is negligible. The State by all historical evidence to this hour will secure a reduction of the treaty reservation as rapidly as of the Executive order reservation. The State can not have any interest in creating a situation whereby the Indian is deprived of the right of that minimum of compensation which he might get from the court. Uncle Sam pays that bill. The States can have no desire to have the Indians jockeyed out of the right to claim that compensation.

I have written Mr. McDougall of the Board of Indian Reservations asking if he will provide the committee a series of maps that he has prepared showing the rapidity with which the Executive order reservations have been reduced and showing that the reduction in treaty reservations has gone ahead much faster than with the Executive order reservations. The unlocking of resources has been much swifter.

Senator CAMERON. Have the Indians been reimbursed for the lands taken away from them?

Mr. COLLIER. Sometimes it has been the sale of land by the consent of the tribe and the proceeds have gone into the tribal funds. Sometimes it has been an act of Congress decreeing so much for a reservation wiped out. In either case it is legal. The court has held both legal. In the case of reduction through the allotment method of course there, ultimately the fee passes to the Indian uncontrolled and he may sell the land just like you or I. It is taxable and he is subject to all the laws of the State. That is equally applicable to the Executive order reservations.

One other point as to the policy of Congress heretofore. I venture to say that there are 100 statutes in which Congress has dealt with the question of the right of the Indians to Executive order reservation values other than surface values, such as, for example, the timber and the land itself, the whole land with all that it contains. There is a uniform course of action except in the matter of oil which has been to recognize that the Indians have identically the same kind of interest that the treaty Indians have in treaty lands.

To-day the White Earth Apache Reservation in Executive order reservation is being rapidly denuded. Oil proceeds go into the tribal fund. The whole Indian bureau operations are supported out of that fund. I mentioned the other day the case of the Zuni Reservations. All timber was sold off and the proceeds went to the development of an education system for the tribe. There is at this moment pending a bill which is a little inconsistent with this measure, a bill affecting the Executive order Cheyenne Reservation, a bureau bill, in which bill the bureau quite correctly takes for granted the policy of Congress, namely, that the terms of the bill after providing for an allotment of lands state that all of the other resources, including minerals, shall be segregated for the use of the tribe. That is not a good bill in some particulars, but that evidently came from the bureau without an awareness of its possible conflict with section 2 of this bill.

I think if the people and their representatives from the Rocky Mountain and Western States were fully aware of the status of Executive order reservations, of the undisputed history of those reservations, they would not have any preference in the direction of having an Executive order reservation declared different from property in which the Indian has no title. They would know that the reduction in area, the process of developing taxation, can be just as fast on the treaty reservation as on the Executive order reservation.

The great interest that the bureau has in this measure is the one that I have indicated; that if the Executive Order Reservations be held one that can be reduced by the Executive at will, without a court appeal by the Indian, without reference to Congress, it places in the hands of the Indian Bureau a power that is almost inestimable, one that can be used in the control of commercial opinion, public opinion in politics, a power to give or to withhold.

Of course, Congress could enact a statute—it is not in the law now—reclaiming to Congress that same degree of control over Executive Reservations that it has over treaty reservations. But Congress has not passed that law.

I want to say a word about section 3, just to cover a relatively unimportant paragraph of the bill. I believe in following the wording of the Senate draft rather than the wording of the House draft because the Senate draft contains an amendment. They are identical except regarding the last portion. It says that any applicant who did not get a permit can have one of he meets certain conditions; that is, if he has spent money, built roads, etc.; clearly a just provision.

I want to comment on section 3 as it stands. As in the case of section 2, section 3 as now worded seems to us to imply the recognition of a vested right in the permittees. They are not required to make a showing of investment. The mere fact that they have that permit made conclusive evidence. The applicants are required to make a showing; the permittees are not required to make a showing. The permittees, regardless of whether they have made an investment, get their permits validated. The implication is that they did acquire such vested rights under the ruling of Secretary Fall and they obtain a permit under that ruling.

The same results would be accomplished by simply requiring that any person to obtain a lease under the terms of the act shall make a showing of the investment here stated in the last paragraph.

If he makes such showing regardless of whether he is or is not a permittee he proceeds and has the advantages of the act of 1920, and if he can not make that showing he is ruled out. As a matter of fact, the granting of permits or the failure to grant them and leaving the applicant held up was a very accidental matter.

The thing that should concern Congress, as undoubtedly it concerns the investors, is whether the money was invested. The money was invested in good faith whenever it was invested and the possession of a permit under the Fall ruling might indicate nothing more than the filing of an application. If the amendment be so phrased that when they make this showing then they get the advantages of the act of 1920 regarding royalty and other terms, there is no implied expression concerning the matter of title, vested right, etc.

I do not see that any harm would come if a proviso were put in making it plain that the action by Congress in this matter is an act of grace and that it is not intended to be construed as a recognition of a vested interest obtained under the law of 1920. That would completely safeguard it.

I understand that some hardship might be imposed on some of the permittees by this suggestion in that it would require them to make a showing of the investment. They can make a showing but they would have to spend some money in making that showing. I think only 20 permittees are involved and the showing is a thing of physical facts. It ought to be possible for the Interior Department to satisfy itself about the facts without making all those men come to Washington with lawyers. I should think the Secretary could send Mr. Hagerman up there to look at the ground and say whether they did or did not.

In conclusion may I speak of the Navajo Indian situation? Commissioner Burke read into the record a telegram, and I understand that Mr. Hagerman is here. The Navajo Indians are one of the Executive order groups. There are Executive order reservations in 11 States. The number of them I have not computed but it is huge. There must be 100.

I would suggest that the committee before it gives weight to the alleged or actual statement by the Navajos obtain the context, the title record, of the discussion in the course of which they said that they were willing to take 50 per cent and let the rest go, in order to see whether they had before them the facts as to the possible indirect consequence of this act upon their title. That was not in the consciousness even of those interested in this measure. It may have been in Mr. Hagerman's consciousness at the time. He is intensely concerned in getting revenue for the Navajos. It may not have been brought to their attention and their reaction would undoubtedly be a different one if they thought that in the process of getting revenue they might be selling their birthright for a mess of pottage.

The whole presumption of S. 3159 and of the Hayden duplicate in the House is that the Indians now have nothing; they are going to get 62½ per cent as an act of generosity from Congress; it is an act of grace.

Of course, if the Navajos had come to the belief that they had not any vested rights, that they were defenseless, and that unless they said they would take 50 per cent they would get nothing and that Congress would actually do that to them, the poor things might have said it, but, as a matter of fact, nobody dreams that Congress would do any thing of the kind.

Let us assume that this pending suit is carried to the Supreme Court and decided adversely to the Government. Nobody can imagine Congress taking advantage of such a technical outcome and refusing to allow the Indians to participate in their royalties. Congress would not do it on the very theory that Congress has always been treating Executive order reservations as acts of grace.

Now, why should we assume that Congress should now step in and do a wicked thing? If they thought that Congress might do that wicked thing, if they did not take this little, of course,

the Navajos would say: "Give us something rather than nothing;" and I would urge that the entire proceedings of the meeting or meetings wherein this matter was discussed between the Navajos and the Government representatives be obtained and examined. The matter is of vast importance not only to the Navajos, but they are being put on record in a matter which affects Indians in 11 States, and not themselves alone.

I do not hesitate to make the prediction that when the matter, as it has been developed in everybody's thought, gets to the Navajo Tribal Council you will find the council not on record in favor of such a division of royalties.

I might add that in New Mexico two-thirds of all the Pueblo land is Executive order land. There are possibly oil developments on that land. We do not know. Those Indians have a very direct interest. The ratios are almost identical with the Navajos, with Executive order reservations and treaty reservations. The Apache Reservations are Executive. If we are going to deal with expression to the Indians, an effort ought to be made to obtain an expression from the Indians, many of whom have an estate in this question that is 100 per cent, whereas the Navajos have an estate of only 60 per cent. Part of their reservation is in treaty and is there safeguarded.

Senator LA FOLLETTE. Mr. Collier, I understand that you contend that Congress in its acts heretofore has not attempted to deal substantially differently with the Executive order reservations as against the treaty reservations.

Mr. COLLIER. Exactly.

Senator LA FOLLETTE. I am informed that those who contend that the Indians have no substantial right on the Executive order reservation rely to a certain extent on the act of May 29, 1924, as an indication that Congress has dealt with that subject. Will you explain that a little?

Mr. COLLIER. I am glad you brought that matter up. I would say that the act of May 29, 1924, itself grew out of the identical controversy that is being dealt with here, a controversy that was begun when Mr. Fall, to the amazement, I may say, of a great many people, made his ruling, a ruling in effect that the Indians had no right to the Executive order reservations. He first raised this question categorically. As pointed out by Mr. Stone, so little had it been raised categorically before that it had never been passed on by the courts. It has been passed on the courts repeatedly to create a presumption. Mr. Fall raised the question categorically and ruled it categorically that the Indians did not have a vested right. From that time down there has been this controversy that is now going on, in which these measures are involved, and I think one is compelled to say that the position of the Department of the Interior, while its solicitor did make a certain ruling, has been at least that it did not want Congress to act affirmatively in the vesting of title in the Indians.

The treaty reservation act was urgently required with reference to the treaty reservation development of the Navajo area which is now in process under the terms of that act; and for whatever reason the question was simply waived. Had it been tied up with the

question of Executive order reservations there would have ensued a controversy and a possible deadlock.

The act of 1924 has to be considered as one motion in a process of adjustment that is now still incomplete; and while taken by itself, out of time and place, out of the legislative situation it created, it might look like congressional recognition of a fundamental distinction, actually in its context, in its time and place, in view of what had been started by Mr. Fall in 1923 and was then still in a state of solution, it had no such significance. Over against it, of course, are balanced all of the preceding acts.

The thing which amazes some of us is this, that when the present Secretary of the Interior came in he should have promptly moved, as his committee of 100 advised him to do, to obtain a congressional declaration about this matter of the character of the Executive order reservations to the effect that the same sort of qualified vested right held there that held in the treaty reservations.

Senator LA FOLLETTE. Was that recommendation in writing?

Mr. COLLIER. Yes.

Senator LA FOLLETTE. Have you a copy of it?

Mr. COLLIER. I have not, but the Department of Interior itself circulated it thereafter. The Indian Bureau in the capacity of guardian of the Indians might have very reasonably proceeded and sought that and control over the question of reducing the area of the Executive order reservations would have passed from the Interior Department to the courts of the United States. Whether that was their reason for not moving I do not know, but as guardians they might well and justly have moved.

Senator LA FOLLETTE. Can you supply a copy of that recommendation for the record?

Mr. COLLIER. Yes. If I have not it here I will get it from the department.

Senator LA FOLLETTE. You have not changed your mind at all about the fact that this bill as drawn does determine a policy with regard to the rights of the Indians upon these Executive order reservations and determines it in favor of the Indians?

Mr. COLLIER. After long conferences with attorneys I am certain that section 2 does have that effect, and it can be seen in a moment. Section 2 assumes that the revenue from the oil development belongs to the Government unconditionally and not to the Indians; that the Government is free to make any disposal it wishes of that revenue.

The Government takes, by the terms of this bill, 37½ per cent of it and gives it away to somebody else. Now, that inevitably carries the implication and the presumption and the conclusion that the income from the oil belongs exclusively to the Government and not at all to the Indians. No other conclusion could be adduced from section 2 and no other conclusion would be adduced by the courts. One may say that if the courts rule otherwise it will all be thrown out anyhow. The point is that in these matters of reservation rights of the Indians, the character of the Indian interests, the court has followed the political will of Congress most consistently down through the years. The court has not only followed it as a matter of fact, but the court by expressed declaration has

stated that these questions are political questions to be determined by Congress. Therefore, inevitably and properly, according to all of those precedents, the Supreme Court, if this matter comes up to it with this bill before it, if it becomes law, will take this bill into account, and will be swayed by it, unless the Supreme Court reverses its whole *modus operandi* in determining the nature of passing on Indian claims and rights.

Whether Congress intended the courts to be prejudiced or not, the court's decision would be based on the actions of Congress as up to the date when the arguments were filed. The court might even do as Justice Vaudeventer did when he went outside of the briefs and took himself over to the Interior Department and the Smithsonian institution and determined what the political will of Congress had been on his own initiative. I do not think any one can question that, so far as Congress can go, it is a settled question, and it would tend to settle it in the mind of the Supreme Court. The term "prejudice the court" is not a correct term to use. The court would construe as so far directed by the court exactly as based upon the Cherokee decision, and a reading of that decision will indicate what I mean, that the court intends to follow the political will of Congress and the destiny of the Indian is left in the hands of Congress with the Congress as a political agent. The Indian rests in the hands of Congress and at the mercy of Congress and his hope lies only in the justice of mind of Congress.

Senator LA FOLLETTE. Can you find for the record a statement of the number of Indians involved in these Executive order reservations and an estimate of the amount of money which is involved?

Mr. COLLIER. I can give the number of Indians and the area, quite a wild guess.

Senator LA FOLLETTE. I understand, but you can give your opinion.

Mr. COLLIER. The Geological Survey says that there are 40,000,000,000 tons of coal in the Navajo Reservation. How can one say what that is worth?

Senator LA FOLLETTE. Well, such facts as are available I would be glad to have in the record.

Mr. COLLIER. Undoubtedly the figure far exceeds \$1,000,000,000.

The CHAIRMAN. We thank you, Mr. Collier, for your statement. Gentlemen, we will resume the hearings in the room of the Committee on Claims in the Capitol Building to-morrow afternoon at 2 o'clock.

(Thereupon, at 12 o'clock noon, the subcommittee adjourned to meet at 2 o'clock p. m. Wednesday, March 10, 1926.)

DEVELOPMENT OF OIL AND GAS MINING LEASES ON INDIAN RESERVATIONS

WEDNESDAY, MARCH 10, 1926

UNITED STATES SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., Senator Samuel G. Bratton presiding.

Present: Senators Bratton (chairman of subcommittee), Cameron and La Follette.

Senator BRATTON (chairman of subcommittee). Gentlemen, the committee will come to order. We will first ask Mr. Finney to give the benefit of his views upon this bill, S. 3159, which we are now considering, reflecting the development of oil and gas upon unallotted lands within Executive order Indian reservations.

STATEMENT OF HON. EDWARD C. FINNEY, FIRST ASSISTANT SECRETARY, INTERIOR DEPARTMENT, WASHINGTON, D. C.

Assistant Secretary FINNEY. Of course the views of the Interior Department, of which I am one of the Assistant Secretaries, have been set forth in the bill transmitted and the reports made upon it by Secretary of the Interior Work. If there are any particular features which the committee wish me to discuss, I will be glad to do so.

Senator BRATTON. There has been some discussion, Mr. Finney, respecting the language found in the measure that $37\frac{1}{2}$ per cent of the rentals and royalties or other bonuses be paid to the State in which the lands are located in lieu of taxes. Would you give the committee the benefit of your views upon that particular part of the bill?

Assistant Secretary FINNEY. The purpose of that language, which may not be as full or clear as it should be, was to relieve from taxes by the State or States the Indians' share of the royalties of these lands should Congress see fit to give the Indians $62\frac{1}{2}$ per cent, or any other part of the royalties and rentals derived from the lands. In other words, we felt that the States should not tax either the Indians' oil or gas or the Indians' share of the royalties derived therefrom, and there was no intention to relieve from such taxation as the State laws might fix, the operators or producers of the oil on the share which would go to them as their part of the output. And if there is any doubt about the present language of the bill, I think it could be amended by a short clause making that clear.

Senator BRATTON. Making the exception apply to Indians alone, but not to operators, producers, or other non-Indians—something to that effect?

Assistant Secretary FINNEY. Yes; I think that would take care of that and clear up any doubt which may exist on that subject.

Senator BRATTON. The immediate urgency for a measure of this kind relates to the Navajo Reservation, does it not?

Assistant Secretary FINNEY. Yes, sir; the most emergent question relates to the Navajo Reservation in Arizona and New Mexico and possibly may affect a small part of the lands in Utah. I presume this is all in the record already, but a decision was rendered some years ago to the effect that these Executive order lands were subject to the provisions of the general leasing laws, and under that decision 20 permits to prospect were actually approved and the people authorized to go on the land, and some 400 other applications to prospect were filed.

Senator CAMERON. When were those applications authorized, Mr. Secretary?

Assistant Secretary FINNEY. I can not recall the date, Senator Cameron.

Senator CAMERON. Well, approximately.

Assistant Secretary FINNEY. The first ones were authorized in the latter part of 1921 and the first part of 1922, and the others followed right along. But before action had been taken on the remaining 400 odd applications some question was raised as to whether or not the leasing laws did apply. The Attorney General was asked for an opinion, and rendered an opinion that the leasing laws did not apply to land while they were included in Executive order Indian reservations.

Senator CAMERON. That has been the ruling of the department?

Assistant Secretary FINNEY. That has been the ruling of the department, and since the opinion was rendered the Interior Department had followed that opinion.

Now some years ago the matter was taken into court by the Department of Justice in the case of an oil company where it had gone in under one of these permits and had spent a considerable amount of money in drilling a well. That had been made the subject of decision by a United States district court, and has been appealed to the United States Circuit Court of Appeals, where it is now pending. That court, I understand, has certified the question to the Supreme Court. So there has been no judicial determination as to whether or not the leasing laws do apply to these lands. But in that situation, the matters resting under the opinion of the Attorney General that the leasing laws do not apply, and the court decision being just under consideration on appeal, the Department of the Interior feels that it is not free to grant any permits or leases under any law to explore or develop Executive order Indian reservations. So that consequently all development is at a standstill.

Senator BRATTON. And will be so until that appeal is finally disposed of, unless some legislation is passed?

Assistant Secretary FINNEY. That is correct; yes, sir.

Senator CAMERON. That is as to Executive order Indian reservations?

Assistant Secretary FINNEY. As to Executive order Indian reservations. As to treaty reservations they can be leased under the law of 1921.

Senator BRATTON. Otherwise, Mr. Secretary, you consider the measure fair and equitable and wholesome legislation?

Assistant Secretary FINNEY. Yes; I do. Of course, it is just a question of one's opinion of the law. My opinion of the law is that public lands, under the Constitution of the United States and the laws of the United States, can only be disposed of by Congress, and that the President of the United States can not by Executive order vest the title in public lands either in Indians or white men. He has not the authority to do that. And consequently an Executive order of this sort does not vest a fee simple title in the Indians. But of course a great many other lawyers do not agree with that view. It is a question that is in controversy.

Senator CAMERON. The question has never been settled by the courts.

Assistant Secretary FINNEY. The question has never, as far as I know, been settled by the courts. And it seems it can only be settled either by final decision of the highest court of the land, or by Congress itself; and Congress, of course, has the power to pass laws. Even if the lands are public lands and the fee simple title is not vested in the Indians, Congress has the power to give the Indians a share of the proceeds if it so desires. Assuming that Congress thinks the Indians have some moral or equitable claims they have a right to recognize them. And so that unless we wait until this case or some other case drags its length through the various courts and a final decision from the Supreme Court is obtained, if it is obtained, the development will be at a standstill unless Congress passes some law which it deems proper and fair to all parties concerned.

Senator CAMERON. It will probably be a year before the case now pending will get up to the Supreme Court?

Assistant Secretary FINNEY. Oh, I imagine it will take quite a while, because, as I have said, the case is on appeal now to the circuit court of appeals, and that court has not rendered a decision. They have asked the Supreme Court either two or three questions. Now if the Supreme Court refuses to answer those questions then the circuit court of appeals will have to go ahead on its own hook and decide the issues before it. Or if the Supreme Court answers the questions then the circuit court of appeals will render a decision probably with due regard to the Supreme Court's answer. Then if either party were dissatisfied, under the existing law and rule they could apply for a writ of certiorari to the Supreme Court and ask the court to order the case up to the Supreme Court for final consideration. Of course it might take either a year or perhaps two years before it was finally settled. I could not say, of course, just how long that would be.

Senator BRATTON. The conclusion reached by the Federal Court of Utah, which is the only court which has passed upon it up to date, coincides with the views which you have expressed, that is that the

title is vested in the United States, and consequently the general leasing act applies?

Assistant Secretary FINNEY. Yes, that was the effect of their decision.

Senator BRATTON. So that the court decision we have, even though it is the decision of a trial court, is that the title is in the United States.

Assistant Secretary FINNEY. That is correct, yes.

Senator BRATTON. Now Mr. Secretary, is there anything further that you would like to say about the subject?

Assistant Secretary FINNEY. Nothing further than that the Interior Department is interested from all viewpoints, as it were. It is the guardian of the Indians, and is anxious to see the Indians receive equitable and fair treatment. It is also interested in the development of the resources of our public lands in our Western States. So that we are very anxious to see some proper measure enacted which will be just to all parties concerned, and which will secure much needed development in the States of Arizona and New Mexico.

Senator BRATTON. Thank you very kindly, Mr. Secretary.

Gentlemen, Governor Hagerman of New Mexico, formerly governor of the Territory—and I believe a commissioner to the Navajos now, are you not, Governor—

Mr. HAGERMAN. Yes, sir.

Senator BRATTON. Is here, and I doubt if any man has more first-hand knowledge of conditions than Governor Hagerman has. I think we are fortunate in having him here; and, Governor, if you will take as wide a range as you like and enlighten the committee as much as you can, we will be indebted to you.

STATEMENT OF H. J. HAGERMAN, SPECIAL COMMISSIONER TO NEGOTIATE WITH INDIANS, SANTA FE, N. MEX.

Senator CAMERON. Will you give your name and your title for the record, Governor Hagerman?

Mr. HAGERMAN. H. J. Hagerman, special commissioner to negotiate with Indians, Santa Fe, N. Mex. And they have assigned me to the duty of acting as commissioner to negotiate with the Navajos in connection with their oil and other tribal matters, and also as a member of the Pueblo lands board, which has the adjudication of the Pueblo land titles.

Senator CAMERON. Governor, have you made a study of the bill now before the subcommittee?

Mr. HAGERMAN. Well, I had not seen the bill until quite recently.

Senator CAMERON. That is the Senate bill 3159, known as the Bratton bill?

Mr. HAGERMAN. I have read it carefully in the last few days. Prior to that time I had not been acquainted with it.

Just what line, Senator, would you like to have me take on this?

Senator BRATTON. Governor, if you could give us the conditions out there which call for the legislation, whether it is thought there are oil resources, what the conditions among the Indian people are, and how they regard this subject of development. It has been rep-

resented to us that the Indians have expressed themselves as willing to accept 50 per cent even in view of the doubt concerning their title. Now if you could tell us about that we would appreciate it very much.

Mr. HAGERMAN. Well, I was first asked to take hold of this matter in 1923. Then the only question was in connection with the possible oil development on the treaty area of the Navajo Reservation, which comprises about 3,000,000 acres of land. Up to date all of the oil development that has come about there with the exception of one discovery on what is called the Boundary Butte area, which is on Executive order land in Arizona, has been on the treaty area. I went into office in 1923 with an injunction from the Department of the Interior to organize the Navajo Nation into a central government, with a view of ascertaining from them whether or not they desired to lease their oil lands within the treaty area. We held a council in July, 1923, and after full discussion lasting several days the Indians did delegate to the Secretary of the Interior, through me as their commissioner, their authority to negotiate and sign leases on structures within the treaty area, and delegated to me as commissioner of the Navajo Tribe, with the approval of the Secretary, the authority to sign these leases for them.

Then regulations and rules were drawn up by the department under the law for the selection of areas and for the holding of a sale which was held in September, 1923, at which sale various structures were sold to the highest bidder. In all there have been five exploratory leases granted around Shiprock within the treaty area, three of which are good producers.

Prior to that time, or about the same time, certain of the oil companies had received permits to explore for oil on the nontreaty area in what is called the Boundary Butte country on the northern edge of Arizona, almost on the Utah line. And certain discoveries of oil had been made there.

Since July, 1923, we have had two other tribal councils, on July 7, 1924 and July 7, 1925. Of course the main interest of the Indians at those councils, as far as oil was concerned, was in the oil development on the treaty areas, with which development they were very well satisfied, as they had good reasons to be, because it has developed a very considerable oil field there around Shiprock.

Senator CAMERON. The development up to date has been practically all in New Mexico, has it not?

Mr. HAGERMAN. Yes, sir, all of it has. But as regards this particular question, both at the 1924 council and the 1925 council of their own accord the delegates brought up this question of the development of the Executive order areas, and expressed, without any prompting on my part or anybody else's, their desires that the development be proceeded with.

At the 1925 council, which was held at Gallup they did express their hope that the Executive order lands might, through some action of Congress be placed on the same basis as the treaty lands, thereby indicating their knowledge that they knew that the Executive order lands were now on a different basis in their opinion at least from the treaty lands. They look upon the treaty lands as their own lands, practically in fee simple. They do not use that

term, but they think they own them, and the very fact that the Government has deemed it necessary to secure from them their authority to make these leases confirms them in that attitude.

As for the Executive order areas which have been added to the original 3,000,000 acres, and step by step since 1868 when the treaty was made, they regard those as on a different basis. Of course it is too much to expect that they would even attempt to define just what the status is in view of the fact that nobody seems to know exactly what it is, but they feel that they have certain rights on the Executive order areas which are less than the rights that they have been confirmed in on the treaty areas.

In the 1924 council they brought the matter up as to the division of these royalties. They said to me at that time, and very intelligently discussed it—in fact they are very intelligent people, and this council is a very intelligent bunch of Indians—of course they would like to get it all. They wanted me to come back here and try to get it all if they could.

Senator CAMERON. This was at a council held in 1925?

Mr. HAGERMAN. 1924. And they intimated that if they had anything to say about it, and they thought they ought to have something to say about it, that they might be satisfied with a division on a 50-50 basis, but that they did not think that that was enough, but that they would be perfectly well satisfied, so far as they were concerned, with a division on a basis of two-thirds to the Indians and one-third to the States.

Then in 1925, at Gallup, the matter was again brought up. In the meantime the development of the oil on the treaty areas had been very considerable, and they knew a good deal was coming in in the way of royalties, in addition to what had been obtained in bonuses, and that besides that that the operations of the oil companies were giving the Indians a great deal of work in the way of transportation, hauling, and all sorts of other work, and it was greatly to their advantage to have this development. They again expressed themselves informally as being very well satisfied with a proposition of a two-thirds, one-third division.

Just before I came here last week Mr. Chee Dodge, who is an Indian of prominence, came to Santa Fe.

Senator CAMERON. Does he hold any title with the tribe?

Mr. HAGERMAN. Under the rule of this council organization they provide for a chairman of the council. There are 12 delegates and 12 alternates, divided in accordance with the population in the various jurisdictions of the reservation, and there is a chairman and a vice chairman. The vice chairman is a member of the council, but the chairman is not. At the first meeting he was elected chairman of the council for five years—that was in 1923—and he still is chairman. He is a man of a very considerable influence among them. Well, he came to Santa Fe not more than a week ago, and at the same time another delegate from another jurisdiction named Dashne came, who was a very intelligent Indian, and they both came to me urging the desire of all of the Indians of these two jurisdictions that this Executive order lease matter be settled. The Boundary Butte area, where the Midwest and the Southwest Oil Cos. have spent I suppose over \$200,000 on these permits, and have dis-

covered some oil, is about 16 miles west of Shiprock, and they realize that already the development of these companies there has helped them a great deal, and if the development goes on that it will be of great advantage to them.

The matter was not brought up by me, but by them, and they both urged me to impress upon the authorities here their desire that this development proceed, and stated very definitely and clearly that they would be very well satisfied with a two-thirds royalty.

I think that covers the matter.

Senator CAMERON. They practically represent the entire reservation?

Mr. HAGERMAN. Well of course these two men do not represent—

Senator CAMERON. I understand, but they were counsel for the Indians?

Mr. HAGERMAN. Yes; they were both influential men, and they were only echoing what had been stated in these two meetings of the council in 1925 and in 1924, in July.

There are some differences between the various groups on account of sectional divisions, that do not amount to very much. Jealousies, and so forth, but they are not very serious. But this is one thing they seem all to be perfectly agreed upon, that is that a settlement of this long-standing controversy as to this Executive order area be reached, and that they would be satisfied with the proposed division. Of course, they can not go into the technicalities of it, and their method of arriving at conclusions is rather crude perhaps, but they are apparently sound and they are sane.

Senator CAMERON. They sometimes have a pretty decided opinion, though, do they not?

Mr. HAGERMAN. Oh, decidedly so, yes. And they are very intelligent. It must be said for this council that while some of them are very ignorant men, that on the whole, as will be seen from the proceedings of the council, that they discuss things with a great deal of intelligence and a great deal of earnestness too.

Senator LA FOLLETTE. Governor, have you copies of the proceedings of the council meetings?

Mr. HAGERMAN. Yes; there are copies in the department. The first two I did not have taken verbatim, but the third I did.

Senator LA FOLLETTE. The third was at Gallup?

Mr. HAGERMAN. The third was at Gallup in 1925. I had my own stenographer out there on that occasion and took down the whole thing. Yes, there are copies of that on file in the department.

Senator BRATTON. They seem to understand, Governor, that there is at least a difference of opinion as to their interest in the treaty reservation on the one hand and in the Executive order reservation on the other?

Mr. HAGERMAN. Yes, they have a very clear idea of that. Of course when they asked me about it I told them that I thought there was a difference, but that it was a matter which was being discussed by the Congress of the United States and the authorities in Washington, and even the courts had not come to a definite conclusion about it. But they realize that there is a difference. In fact they know there is, because soon after I took over this job they employed me to try to get for them an extension of the reservation east of the

main Navajo Reservation, around what is known as Crown Point, in between Crown Point on the east and the Jicarilla Reservation in northeastern New Mexico. There was formerly an Executive order area which connected practically these two reservations, and in 1909 or 1910 that area was withdrawn, either by Executive order or by Congress, after a number of allotments had been made in the same area to about 2,300 individual Indians. Since that time, on account of these allotments and the constant controversy between the Indian allottees and the white settlers there has been constant friction there in that particular area, and it has been getting worse all the time, so with the sanction of the Secretary a bill was drawn up here about three years ago, a little less, providing for an appropriation of \$200,000 to buy out the alternate sections of railroad land and the patented land belonging to private holders within that area, and make that same area a nontreaty addition to the reservation. But it failed to pass.

Senator CAMERON. How large an area is that, Governor? How large an area is involved?

Mr. HAGERMAN. Well, the area that we had in mind was about 800,000 acres.

Senator CAMERON. At the present time that is open between the two reservations now?

Mr. HAGERMAN. Yes, sir; and it is practically controlled by the Indians because there are so many allotments. Of course as you know, Senator, when they make these allotments to the Indians they are illy defined, and while they are marked on the map, the Indians themselves do not usually know where they are, and it results in constant controversies between the Indians and the white men, mainly over water.

Senator CAMERON. The allotments never were surveyed or anything of that kind?

Mr. HAGERMAN. Well, the land was surveyed and the allotments marked, and you can see the allotments on the map. The Indians usually do not know where the land is on the ground. It is not staked. And just now the matter has come to a head again, because the white men are trying to get the Indians off on account of the use of the waters belonging to the white stockmen. Real difficulty has narrowly been averted there frequently. So they know, as I started to say, that these Executive order area additions can be withdrawn by the authority of Congress if they want to withdraw. They do not think that the treaty areas can be withdrawn. I do not know whether they can be or not.

Senator BRATTON. Gentlemen, the full Committee on Indian Affairs is meeting in an adjoining room for a short session, and Senator Harreld has requested that we come in there for 30 minutes, and we will resume here in 30 minutes from now. If that is agreeable, will suspend now for 30 minutes.

(Thereupon the committee recessed, and upon reconvening the following proceedings were had:)

Senator BRATTON. All right, Governor, if you will resume, we will proceed.

Mr. HAGERMAN. I might say a word as to the advantages which have resulted from the development in the way of incidentally de-

veloping water. There is a clause in the leases to the effect that if the lessees went into water that the wells should be turned over to the Indian Department for the use of the Indians; and as a result of that on the outlying parts of the Hogback structure the Government has taken over two wells which are being used by the Indians. On the Table Mesa they have a well that is being used by the Indians, and there is another one too. So the development has resulted in greatly augmenting the Indians' stock water supply. Moreover, out toward the Boundary View, where these permits were granted, some of the oil companies that had to find water for their drilling and in the course of searching for that water they opened up a number of small springs which were not sufficient for the drilling uses, but were very advantageous to the Indians in the way of stock water. I think that water development has, so far as the Indians are concerned, meant more to them, almost, than the oil, in their own opinion. Water is the life of the whole reservation. A good deal of the country is not very useful for stock raising because of the lack of water.

Senator CAMERON. If you had this \$200,000 that you are talking about that was put in the bill at the last session of Congress, could you clean up this situation down there with the Indians and the white people?

Mr. HAGERMAN. You mean in the Crown Point extension?

Senator CAMERON. Yes.

Mr. HAGERMAN. Yes; that could have been done at that time if the bill had been passed, that would have been sufficient and the stockmen were willing to accede to it.

Senator CAMERON. How about now?

Mr. HAGERMAN. Oh, they would do it now. In fact, there is more reason for doing it now than there was then, because the controversy really has been accentuated since that time and stockmen have told me that most of them have had to give up and come out anyway.

Senator CAMERON. From your personal knowledge of the situation do you think that would be a good thing to do?

Mr. HAGERMAN. I think it would, yes, sir. I think it would be a good thing for everybody concerned. Of course, there was some objection to it because that would take that land out of taxation; but the proposal was that the railroad odd sections should then be exchanged for other lands, which would be in solid blocks and then come into taxable property. Yes, I think it would be a good thing yet.

Senator CAMERON. It might avoid trouble in the future somewhat?

Mr. HAGERMAN. There is almost certain to be trouble about it, unless something definite is done to settle the question. I think.

Senator CAMERON. How long have these allotments been in there; how long have they been made?

Mr. HAGERMAN. Since about 1911 or 1912 they have been being made. I think most of them were made from 1911 to 1915.

Senator CAMERON. They were made while the land was withdrawn?

Mr. HAGERMAN. Yes, sir.

Senator CAMERON. None have been made since it was thrown open?

Mr. HAGERMAN. Oh, yes; I think some have been made since. I think altogether there are about 300 allotments in that general area. We figured that \$200,000 would have been sufficient to buy out the stockmen, so that there would be no complications afterwards if it was added to the reservation under the Executive order addition.

Senator CAMERON. That is in your State, Senator Bratton.

Senator BRATTON. Governor, doubtless there will be other matters arise concerning which we would like to have your views from time to time. Do you think of anything further now upon this particular measure? Your statement has been very interesting and very enlightening.

Mr. HAGERMAN. No; I do not think of anything now.

Senator BRATTON. We are indebted to you.

Mr. Goodwin is present.

STATEMENT OF F. M. GOODWIN

Senator BRATTON. Mr. Goodwin, just as this hearing began this afternoon you handed me a statement in memorandum form relating to the withdrawal of Executive order reservations, stating that no money was paid to the Indians where these reservations were vacated and lands restored to the public domain. Did I understand you to say you got this memorandum from the department this morning?

Mr. GOODWIN. Yes; I got it from the Indian Office.

Senator BRATTON. From the Indian Office?

Mr. GOODWIN. Yes, sir.

Senator BRATTON. In view of that I think I shall submit it for the record.

(The memorandum referred to is as follows:)

MEMORANDUM RELATIVE EXECUTIVE ORDER INDIAN RESERVATIONS

A casual examination of the records relating to withdrawal of lands by Executive Order for Indian use shows that the following reservations were restored to the public domain, and, so far as the records show, the Indians were not reimbursed:¹

Hot Springs Reservation, N. Mex.: established by Executive order dated April 9, 1874; restored to public domain August 25, 1877. (See pp. 120-121, Book of Executive orders.)

Judith Basin Reservation, Mont.: established by Executive order dated January 31, 1874; restored to public domain March 25, 1875. (See pp. 99-100, Book of Executive orders.)

Willowa Valley Reservation, Oreg.: established by Executive order June 16, 1873; restored to public domain June 10, 1875. (See p. 156, Book of Executive orders.)

Drifting Goose Reservation, S. Dak.: established by Executive order June 27, 1879; restored to public domain July 13, 1880. (See p. 160, Book of Executive orders.)

¹A more extended examination will probably disclose that there are other restorations of lands withdrawn by Executive order for Indian use of the same class as those reported above.

Navajo Reservations, Ariz. and New Mexico; established by Executive orders November 9, 1907, and January 28, 1908; restored to public domain January 16, 1911. (See pp 19-20 and 22, Book of Executive orders.)

No cases have been found where the Indians were reimbursed in a monetary way for lands restored to the public domain from previously established Executive order reservations.

Mr. GOODWIN. I will state that when I was acting over there as Assistant Secretary, that my recollection did not correspond with some of the statements made before these hearings, and I checked this up to satisfy myself, and I asked the Indian Office to prepare this memorandum. It has to do with the fact that up to 1871 they were treaty reservation and then after that they started to create Executive Indian reservations, and the statement by implication was that those were the two methods.

I recalled that after that date and up to, I think it was 1919, there were a number of reservations created by acts of Congress and that in connection with the withdrawals there has been a number of cases, one that I recollect distinctly out in my own State of Washington, where there had been a reduction in the area of the land withdrawal by Executive order, and no compensation has been arranged for to the Indians on account of that reduction in the area. And I asked the Indian Office to check up and tell me whether or not it was uniform or it there had been a number of cases of each kind. I was under the impression that in some cases when a reduction was made in the Executive Indian reservations that there had been a compensation paid to the Indians on account of that reduction, and in other cases that had not been done. The statement that the office gave me runs from away back in 1874 down to 1911, in which they recite as examples some five different cases in which they state positively that no compensation had been paid either then or by any subsequent acts of Congress on account of the reduction of the areas of the Executive Indian reservation, and then they put this note which is on the memorandum there, and they state:

No cases have been found where the Indians were reimbursed in a monetary way for lands restored to the public domain from previously established Executive order reservations.

I was under the impression there were some, and it was perhaps 50-50 where it had been paid and had not. But I had this checked up for my own information and supplied it to you.

There was another error, I think, crept in. Of course, I happened to be in the department at the time this order was issued by Secretary Fall holding that these lands were open to the general leasing act, and also at the time those leases were made in the Navajo Reservation. In fact, I think I approved all of those leases, except one. And that is that those leases were made under the act of May, 1924. Those leases were all made prior to that time and they were all made under the act of 1891, and they were made before the time that Congress enacted the law which permits taxation upon a different basis. I do not know as it has any bearing, but it crept into the record. The leases on the treaty reservations which have been developed about which Governor Hagerman has been speaking, those leases too, by the way, were for a period of 10 years, whereas

under the act of 1924 they were for so long as oil and gas were found in paying quantities. And one of the things that is needed up in that section of the country as the Chairman is aware, is transportation, and the people who are interested in supplying transportation or a pipe line for that section are extremely desirous of seeing some legislation here which will open up those fields and have a definite solution, because it means so much tonnage to them if any adequate transportation system is put in there.

As it is now there is a narrow-gauge line from Farmington up through Cumberland, 10,400 feet elevation, running to Alamosa, and the tank cars that are in service there can make an average of $12\frac{3}{4}$ trips per month, and it is almost impossible to move and get rid of the oil from the present production, of something like one-fifth of what is being produced at the present time. It restricts it to the present walls, and they have had to put in storage tanks. This oil is very volatile oil; it evaporates very rapidly. I was out there last summer, and I saw them put some of the oil in a truck and run it without any refining, and by storing it it means a great loss to the Indians, as well as to the producers, because their royalty is measured after it is taken out of the tanks, and it means a whole lot to them in the development of transportation to these oil fields, and to the other persons interested.

Senator BRATTON. And at Alamosa the narrow-gauge line connects with a standard-gauge line and it necessitates the transferring of the oil from the narrow-gauge cars to the standard-gauge cars?

Mr. GOODWIN. Yes, sir.

Senator BRATTON. That is a serious handicap to the development of oil in the San Juan Basin?

Mr. GOODWIN. Yes; and a more serious handicap is the hard curves and the grades and the roads into the basin. It is very slow work.

Senator LA FOLLETTE. In connection with this memorandum I believe the representative of the Indian Rights Association has one or two instances he can recite in which compensation was paid.

STATEMENT OF S. M. BROUIS, REPRESENTATIVE OF THE INDIAN RIGHTS ASSOCIATION, PHILADELPHIA, PA.

Mr. BROUIS. This just occurred to me. But I might say first, in introduction, that I have been quite familiar with the Indian question. I first started in 1874, and I became secretary of the Indian Rights Association in 1898, and have been interested in it ever since and have traveled over the country and, of course, have watched Indian legislation as much as one individual can. You can not watch everything so minutely as can be done.

But I wanted to say regarding the suggestion and the rule that no compensation has been paid to the Indians, there is a very distinct exception to that rule in the Colville case in the State of Washington. That came about by passage of the act throwing that Executive order reservation open to settlement. That was many thousands of acres of land. And it was thought at first that being Executive order reservation that the Indians possibly were not entitled to any of the compensation; and Senator Curtis, who was then a member of

the Senate committee, as he is to-day, I believe, fought that out in the Senate committee. I think he is responsible for the decision that the rights of Indians on the Executive order reservations to recover the amount of money realized from the sale of these lands was a good one, and the Senate decided at that time in that way, and that has been the rule, if I remember rightly, since then.

Now, I realize, as Mr. Goodwin says, that where there have been small tracts restored to the public domain out of Executive order lands set apart, no compensation has been given, because no one took up the case and did not care to raise the question. There are one or two other points that perhaps came up—I did not expect to talk to the committee at this time. The Supreme Court, as the members of the committee well know, no doubt, as early as 1891, in the case of *In re Wilson*, and that was reaffirmed in *Spaulding v. Chendler*, held that the right and title of Indians to the Executive order lands was as sacred as were the treaty reservations. That seemed to be quite conclusive so far as the Supreme Court was concerned.

The case that came up from Utah that has been transferred to the Supreme Court of the United States—I have understood that was not a good case as representing the rights of the Indians, for this reason, that those lands represented in that Harrison case that is on appeal, or by transfer, at least, to the Supreme Court, involves lands that were set apart for Indians in general; it did not state that those lands were set apart for the Navajo Indians. That is thought to be quite an important point in that case, if there is going to be a decision, it should be an opinion in a case of lands set apart for a certain tribe of Indians. I thought perhaps I should make that statement.

Senator LA FOLLETTE. I am glad you have made the statement.

Senator BRATTON. Mr. Goodwin, you had concluded your statement?

Mr. GOODWIN. I think so, Senator. I had a statement in connection with this, I do not know whether you care to hear it—

Senator BRATTON (interposing). Yes.

Mr. GOODWIN. I have listened to these discussions with a great deal of interest. It occurred to me first in connection with the general bill, which relates to 11 States, that the provision should be inserted in the end that this in no way involves any question of policy except as to these particular matters covered in the bill. Then the thought occurred to me that to permit this development in which we are interested, that that bill might be restricted to the oil industry in this particular territory and made applicable to that alone, so as not to cover any of these other reservations.

And the third solution suggested itself to me, that we could restrict this to the relief which was apparently originally intended, of applying it to these twenty-odd permits on this particular reservation, or these reservations in Arizona, Utah and New Mexico, and insert a statement in that bill that this relief there was not intended to establish any policy. I do not know whether that would help to solve any of these problems, or not, but either one of those solutions would help to bring about the development up there in which we are

all interested in those reservations and leave open for consideration by the Senate and the Congress the question of policy for all Executive Indian reservations.

Mr. BROUITS. Mr. Chairman, it seems to me that suggestion might be incorporated in the bill.

Senator BRATTON. We will give it consideration. I have thought something along the same line. What seems to be of immediate concern relates to the Navajo reservation.

Mr. BROUITS. There is another matter that I might mention, if I might be allowed.

Senator BRATTON. Yes.

Mr. BROUITS. It ought to be stated on the record that the Indians have agreed to this. Whether Governor Hagerman can file with the committee a statement showing that the Indians fully understand the situation.

Senator BRATTON. I think there is a copy on file showing that, with that report.

Senator LA FOLLETTE. As I understand the governor's statement that tribal council did not pass definitely on this point. They merely suggested in their remarks that they would like to have the Executive order lands adjusted, and some of them speaking at the council stated that they would be willing to accept even 50 per cent in order to get it settled. But, as a matter of fact, no definite action was taken, if I understood the governor correctly.

Mr. HAGERMAN. Yes; you are correct. There was no formal resolution drawn up in that regard. It was just discussed in the course of the general discussion. I do not think there would be any trouble, in case it was desired, to get from the council a formal declaration; although, of course there would be a good deal of trouble and expense to get them together for that purpose.

Mr. BROUITS. Mr. Chairman, might I suggest that our association and myself took up the matter with former Secretary Fall, and later with Secretary Work of a decision on the Executive order lands, in which Secretary Fall held that Executive order lands are merely public lands temporarily withdrawn for the use of the Indians. We contested that decision. We could not make any headway with Secretary Fall, and likewise failed with Secretary Work and Senator Lodge interceded and referred the matter down to the Attorney General, and that is the way we came to get the decision from the Attorney General, and while they did not pass on any lands in Executive order reservations, they said, if I remember, without quoting the words exactly, that they would feel obliged to hold that the Indians did have title, although they were not asked to pass on that directly.

Senator LA FOLLETTE. Of course, I am not opposed to a development on this reservation, or any other, but if this question of the rights of the Indians to title on these Executive order reservations is to be decided by any Congress I do not want it decided in any oblique manner; I want it decided so that every Senator and every Representative may know exactly what is being done with regard to the rights of the Indians, and with regard to the establishment of this policy. And, personally, so far as I have gone in the mat-

ter I am inclined to the belief that justice and equity will guide the Congress to establish the policy that the Indians are entitled to the equity, and if not a vested right, one bordering on that in these Executive order reservations, just as they are in the treaty reservations.

Mr. BROUITS. Another thought I had, Mr. Chairman. I am interrupting a great deal. In looking up the records during this effort we had regarding the decision of Secretary Fall we found, in a statement made in the fall of 1922, coming from the files of the Indian Office, there were found to be about 35,000,000 acres of land then in treaty and Executive order reservations unallotted, and of that number probably some 22,000,000 acres were Executive order lands; some three-fifths. If we take away the title by some act of Congress or throw a cloud upon that title of the Indians to ultimately receive those lands in allotment, then we are striking right at the rights of the Indians. The Government has heretofore said, "We want you to go on these reservations and build up homes." Under the 1887 act they said to the Indians to go on the reservations and build up their homes and that these lands would be allotted to them.

Now, in studying this question, it would be enlightening to study the case of *In re Wilson*, I think in Two hundred and fortieth United States; and then another case, possibly since that time.

Now, if you take away the title or strike out the title of the Indians in ultimately securing the land in Executive order reservations it takes away from them the incentive to go out and build a home. Many of the Indians are quite prosperous and industrious and they might go out and put \$10,000 on the unimproved land in Executive order reservations, and then if there was not title, that might be taken away from them readily afterward. It would take away from them the incentive for progress and to build themselves a home. I think that is one of the worst features that would result from an attack upon the title, either directly or indirectly, and I think the Congress ought to, as soon as possible, agree upon this policy, and I feel that they should give the same right in an Executive order reservation as they have in the treaty reservation. It is a big question, it affects 350,000 of the first Americans, and certainly while some of these Executive order reservations may have been set apart where the Indians did not live, but usually you will find they had the same right on Executive order reservations as on the treaty reservations; usually the same right, because they were living in that section of the country, although it was not set aside by treaty. I think that is an important matter, that there is the land, although not set aside or apart by treaty. I do not know just the proportions, but take some of these Navajo reservations, I think you will find that same principle applied.

Senator BRATTON. Gentlemen, if there is nothing further, and so far as I know, there is no further testimony—

Mr. JONES (interposing). If I might be permitted, Mr. Chairman, I would like to make a further statement.

Senator BRATTON. Certainly.

ADDITIONAL STATEMENT OF SHIRLEY P. JONES

Mr. JONES. I would like to supplement my statement in the record slightly by placing in the record a list of the questions certified to the Supreme Court of the United States, which I secured from the Supreme Court of the United States, which were actually certified by the Circuit Court of Appeals of the Eighth Circuit. It may be of some interest to the committee to have these questions in the form in which they are certified.

Senator BRATTON. Yes.

(The questions referred to are as follows:)

In Supreme Court of the United States, No. 872, October Term 1925. The United States of America v. Ed. McMahan Harrison, Midwest Oil Co., and The Southwest Oil Co. Certificate.

QUESTIONS CERTIFIED

1. Was there authority in the Secretary of the Interior to issue, under the provisions of the leasing act of February 25, 1920 (41 Stat. L. 437, 441, Comp. Stat., 1923 Supp. Sec. 4640 $\frac{1}{4}$ ss) the permit which the United States now seeks to have canceled in this suit

If this question be answered in the negative then we ask:

2. Can this suit be maintained by the United States in equity to cancel the permit, it having been issued upon formal hearing by the Secretary of the Interior, no claim of fraud or bad faith being made, and the Government having brought no action to cancel the same for 1 year 10 months and 9 days after its issuance, appellees Midwest Oil Co. and Southwest Oil Co. in that time having expended over \$200,000 in developing the property for oil, which to them is a total loss if the permit is canceled?

These questions of law are by the United States Circuit Court of Appeals for the Eighth Circuit hereby certified to the Supreme Court in accordance with the provisions of section 239, United States Judicial Code.

ROBT. E. LEWIS,
United States Circuit Judge.
WILLIAM S. KENYON,
United States Circuit Judge.
THOS. C. MUNGER,
United States District Judge.

Judges who sat in the Circuit Court of Appeals on the hearing of the case.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of United States of America, appellant v. Ed McMahan Harrison et al., No. 7033, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Mo., this 10th day of December, A. D. 1925.

E. E. KOCH,
*Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.*

Mr. JONES. I would also like to make this statement, in line with the statement made by Mr. Goodwin. We, of course, are interested in the permits of the 21 or 22 applicants who may be entitled to relief, and if the question of policy is to be delayed at any length we would like to have the relief extended to us, because we think we are entitled to it. Our investments are in there and the roads are going to pieces, and our pipe is in the ground, and the relief can very readily be extended to us without raising any of these questions and

without committing the Congress to any particular policy except the policy to grant relief to us.

In this connection the statement was made yesterday that the same provision that is in Senator Bratton's bill with reference to the lessees should be made as to permittees. I simply want to point out that that does not apply to the permittees at all. The requirement that the applicants shall show that they have drilled and made roads and other improvements, etc., has no application whatever to the permittees. The situation of the permittees was that they went in there by permission and spent their money. The Government did not require that they build any roads, or drill or make any improvements. They may have built roads, and they may have geologically surveyed the land, but they were not required to do it; they were not required to build roads, and to apply that requirement to them is not consistent, because even though they may have spent thousands of dollars, they might not qualify under that. The theory of the permittees is that as an act of generosity and recognizing a moral obligation, these men went on there at the invitation of the Government, and that that is sufficient without requiring them to spend any more money. That is a thing that the department regards, and the Government already recognizes. As to the applicants that is a different situation. That to bring them under the relief they must show an extraordinary condition; that they must show these things that are provided in the bill.

I wanted to make that plain to the committee, that there is a distinct line of difference between the two.

Senator BRATTON. I think we appreciate that.

That is all, and we will stand adjourned.

(Thereupon, at 4.30 o'clock p. m., the subcommittee adjourned.)

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CONSTRUCTION OF A SANATORIUM AND
HOSPITAL AT CLAREMORE, OKLA.

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

S. 1833

A BILL PROVIDING FOR THE CONSTRUCTION OF A
SANATORIUM AND HOSPITAL AT CLARE-
MORE, OKLA., AND PROVIDING AN
APPROPRIATION THEREFOR

MARCH 18, 1926

Printed for the use of the Committee on Indian Affairs



WASHINGTON
GOVERNMENT PRINTING OFFICE
1926

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CONSTRUCTION OF A SANATORIUM AND HOSPITAL AT CLAREMORE, OKLA.

THURSDAY, MARCH 18, 1926

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met, pursuant to call of the chairman, at 2 o'clock p. m., in the Commerce Committee room, Capitol, Senator John W. Harreld (chairman), presiding.

(The committee had previously considered several matters pending before it, and the hearing on the bill to provide for the construction of a sanatorium and hospital at Claremore, Okla., was called before the committee at 5 o'clock p. m.)

The CHAIRMAN. We will now consider S. 1833, a bill providing for the construction of a sanatorium and hospital at Claremore, Okla., and providing an appropriation therefor.

(The bill referred to is as follows:)

[S. 1833, Sixty-ninth Congress, first session]

A BILL Providing for the construction of a sanatorium and hospital at Claremore, Okla., and providing an appropriation therefor

Whereas the Indians are wards of the Government and it is its duty to provide for their welfare by providing ample hospital facilities to care for their physical infirmities; and

Whereas a large per centum of Indians under the guardianship of the United States is within the State of Oklahoma; and

Whereas there is at Claremore, Oklahoma, an abundance of water commonly known as radium water, containing the medicinal qualities especially adapted for the treatment and cure of skin, stomach, blood diseases, and rheumatic ailments; and

Whereas water of this character is not obtainable elsewhere; and

Whereas many Indians of Oklahoma and other States are afflicted with said diseases; and

Whereas it would prove of great benefit to the Indians to have hospital facilities afforded them at said point at Claremore, Oklahoma: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated, out of funds of the Treasury not otherwise appropriated, the sum of \$500,000 for the purpose of acquiring a site, by purchase, condemnation, or otherwise, at Claremore, Oklahoma, and the construction of a sanatorium and hospital thereon and providing all proper and necessary hospital equipment for the use and benefit of duly enrolled Indians afflicted with skin, stomach, blood, and rheumatic diseases or any other disease for which the radium water at Claremore, Oklahoma, is efficacious.

That any duly enrolled Indian afflicted with diseases which are properly treatable at the sanatorium and hospital hereby authorized shall be entitled to admission thereto in accordance with the regulations hereinafter provided for.

That the said sanatorium and hospital shall be under the jurisdiction of the Secretary of the Interior, who shall make such rules and regulations as he

may deem proper for the admission of persons to, and the management and conduct of the sanatorium and hospital herein authorized: *Provided*, That the treatment at said sanatorium and hospital shall be free of charge or cost to all duly enrolled Indians who are admitted for treatment.

That the Secretary of the Treasury is authorized to acquire a site and provide for the construction of the sanatorium and hospital, by contract or otherwise, as he deems most advantageous to the United States, and properly equip same and to expend the amount herein authorized, or so much thereof as may be necessary, for the purchase of the site and the construction of the building and its equipment: *Provided*, That the Secretary of the Treasury and the Secretary of the Interior shall act jointly in the selection of the site, in determining the dimensions of the building, and in providing same with equipment.

The CHAIRMAN. The first witness who will be introduced will be Mr. Clarence B. Douglas. Mr. Douglas, give to the reporter your name and address, and proceed to say anything you want to say with regard to the bill.

STATEMENT OF CLARENCE B. DOUGLAS, TULSA, OKLA.

Mr. DOUGLAS. Mr. Chairman, and gentlemen on the Senate Committee on Indian Affairs, I desire to call your attention to Senate bill 1833, now pending before your committee, of which Senator Harreld is the author, a similar bill by Congressman Montgomery, of the first district of Oklahoma, having been introduced in the House, and being now before the House Committee on Indian Affairs. The bill in question in general terms provides for an appropriation to build at Claremore, Rogers County, Okla., a hospital and sanatorium with baths for the Indians of the United States. The same to be operated under the direction and supervision of the Interior Department.

Claremore, Okla., is a town of approximately 6,000 people, served by the main line of the Frisco Railroad and the Missouri Pacific. It is a center of numerous highways of Oklahoma, and is easily accessible by auto from all points of New Mexico, Arizona, Texas, and Kansas. The reason for locating this hospital at Claremore is because of the discovery at that place more than 20 years ago of an artesian supply of medicinal waters which since that time have been administered internally and by baths to thousands of people suffering from rheumatism, skin diseases, blood disorders, stomach and intestinal troubles. The results in administering this water have been most phenomenal, and it is estimated that an average of 75,000 baths are now given annually at the five bathhouses established in Claremore. Patients from more than 40 States and from foreign countries go to Claremore for the treatment of the diseases named with highly beneficial results. The purpose of this bill is to give to the North American Indians hospitalization without cost in the heart of the Indian country in close proximity to 50 per cent of the Indians of the Government. It is peculiarly true that because of their mode of life Indians of the various tribes of the United States suffer from the diseases for which these waters are most beneficial and through the administration of which permanent cures in thousands of cases have been effected.

The bill provides for the treatment of Indians of record without cost, and because of the fact that they can be sent to Claremore and be in congenial surroundings, associated with their own people, they

will be more inclined to remain at Claremore and get the benefit of the waters than they would at any other health resort. A former director and superintendent of the Hot Springs, Ark., Reservation, who held that position for eight years, has made the statement that the waters of Claremore have no equal in the entire United States. That these waters have the combined medicinal properties and give beneficial results that follow treatment at Hot Springs, Ark.; French Lick, Ind.; and Mount Clemens, Mich., combined. That for blood disorders and rheumatism the water equals that of Hot Springs; for intestinal trouble is the equal of French Lick, Ind.; and for skin diseases is equal to the waters of Mount Clemens, Mich. Thousands of cases have been taken to Claremore on cots or in wheel chairs, and after a few weeks' treatment with the water return to their homes fully restored to health.

Senator Harreld recently sent a communication to the Indian agents on the various reservations throughout the United States and has received 60 replies to his communication, practically all of which indorse the purpose of this bill and emphasize the fact that the Indians under the respective agent's charge from 10 to 90 per cent are afflicted with stomach troubles, skin diseases, blood disorders, or rheumatism, and a number of the agents announce the fact that numerous Indians from their reservations now go to Claremore for treatment and receive splendid results.

I want to submit for the consideration of the committee a letter from the Roger County, Okla., Medical Association and a complete file of 60 letters from Indian agents before referred to as a part of the record in this hearing. The Harreld-Montgomery bill is a constructive, practical, and humanitarian piece of legislation most highly beneficial to the Indian tribes and is probably more general and more important in character to the Indian race than any previous legislation ever presented to this committee. This bill is designed to do something for and not to the Indians, to restore the ill and disabled members of the various tribes to good health, to prevent suffering, agony, and premature death among the Indians, and to reach that type of Government wards in a practical way which are now not receiving proper medical treatment. The United States Government can not do a more practical and generous act of supervision and care for the Indians than by the passage of this bill and carrying out its intentions to the fullest degree.

CHEMICAL ANALYSIS OF RADIUM WATER AT CLAREMORE, OKLA.

As shown by Edw. H. Keiser, professor of chemistry, chemical laboratory, Washington University, the chemical analysis of radium water at Claremore, Okla., is as follows:

[Solids, grains per United States gallon]

Iron carbonate	4.735
Calcium carbonate	19.775
Calcium chloride	69.272
Magnesium carbonate	1.427
Magnesium chloride	106.342
Sodium chloride	1,925.975
Lithium chloride	.324
Total solids	2,127.850

Bear in mind that the last three figures are decimal fractions. Thus the first item should be read: Four grains and seven hundred and thirty-five one-thousandths of a grain. The analysis does not include the hydrogen sulphide gas (a form of sulphur) with which the water is heavily charged.

The economy of the Claremore water treatment comes from the fact that little if any medicine is required. The flow is artesian—no pumping being required—and the supply inexhaustible. Claremore is a modern county-seat town of good citizenship, good schools, churches, and clean morals, free from the vices of the usual health resorts and in every way an ideal place for the ailing Indian, who will receive from the entire community sympathy, consideration, and helpful attention.

We had the honor of appearing yesterday before the Secretary of the Interior, the Commissioner of Indian Affairs, and the members of the medical staff of the Interior Department, and we went over this matter at great length. Secretary Work seemed to be interested, and he referred the matter to the medical department of the Interior Department for an exhaustive report and investigation.

We had not thought—the Senator had not thought, nor had I thought—that during this session we would be able to get this legislation enacted, but we wanted to plant the crop and we hope to harvest it later on.

We wanted to get the information before you, gentlemen, so that when the bill came before you for action you would know all we know about it, and I would be glad, if there are any questions you wish to ask me about it, that you ask them now, and I will do my best to answer you. I am simply a business man, living at Tulsa. A company, of which I am president, has put up at Claremore a bathhouse, but we built that because the white people did not have adequate facilities for treatment.

I think the Indian ought to be taken care of, down there where they can get to a hospital in an automobile from four States in less than a day, and be among people who know him, understand him, and who will help him when he gets there. I think anyone who knows the condition at Claremore will conclude this is an excellent piece of legislation.

I want to say to you that I am not telling you something I have heard about the Claremore waters, or something I have read about, or something I think. I am telling you something I know. I went to Claremore some two years ago, in very bad physical condition, and after remaining a comparatively short while, was entirely restored to health.

While there I saw hundreds of people who were receiving and had received the treatment with highly beneficial results.

A conductor on the Frisco Railroad advises me that he has taken up more than 500 tickets from patients in the baggage car, on cots and wheel chairs, who have later told him on his train as they were leaving Claremore that they were completely restored to health.

I think you ought to know that, following my cure at Claremore, I decided that more adequate facilities should be supplied for the use of those people who were able to pay, and organized a company; and we have completed and have in operation one of the most beautiful little bathhouses in America.

We do not expect the pending bill to be beneficial in any way to our company, so far as our business is concerned, for the reason that we would probably lose a limited amount of business from wealthy Indians, which we have now, to the new Government hospital, and we would not be in the market for the type of cases that would go to the Indian hospital.

So far as I am advised, this is the only bill introduced in Congress to do something for all of the Indians of the United States. I know it to be true, having spent my life among the Indians, that many of them are dying prematurely and suffering untold agonies from the peculiar diseases that the Claremore water will absolutely cure.

In my judgment the Government of the United States can pass no more important piece of Indian legislation than in the enactment of this bill, giving to these wards of the Government proper treatment, which at this time they can not elsewhere receive.

Should this appropriation be made and this hospital and sanatorium completed, and the matter be brought thereby to the attention of the Indians themselves on the various national Indian reservations, it would unquestionably result in many more Indians going to Claremore to avail themselves of this treatment.

At the present time there are always a number of Indians at Claremore taking treatments, but the facilities are inadequate; there is no Government supervision; they have no special care; and they are too poor to meet the charges made which would give them the treatment bringing the best results. Therefore, the present equipment is wholly inadequate and utterly fails to render the service to the Indians to which they are entitled.

The CHAIRMAN. You say you have some letters. Without objection they will be made part of the record.

(There being no objection the letters are here made part of the record, as follows:)

CHELSEA, OKLA., March 11, 1926.

HON. J. W. HARRELD,

Chairman, Committee on Indian Affairs, Washington, D. C.

DEAR SENATOR HARRELD: The Medical Society of Rogers County, of which Claremore is the county seat, have been asked for a statement relative to the medicinal waters at Claremore.

The discovery well at Claremore was brought in from a depth of about 1,100 feet more than 20 years ago, and since that time these waters have been locally used and have attracted attention from a large number of the States in the Union. It is estimated that from 50,000 to 100,000 baths in this water are given annually, and the water is also administered internally.

Very satisfactory results have been obtained with this water by sufferers from eczema, and other skin diseases; from rheumatism, neuritis, and kindred troubles; from blood disorders, and stomach troubles. Many patients have been received here in a helpless condition and in a short time return to their homes practically cured and much benefited.

The treatment is prescribed by a large number of physicians familiar with the curative properties of the Claremore waters, and we believe it would be an excellent thing for the Government to do to make provisions for the treatment of Indians in accordance with the Harreld Senate bill now pending.

Respectfully,

ROGERS COUNTY MEDICAL SOCIETY.

A. M. AENOLD, *President*.

WALTER A. HOWARD, *Secretary and Treasurer*.

Members: J. C. Smith, M. D.; J. C. Bushyhead, M. D.; W. A. Howard, M. D.; John Taylor, M. D.; W. P. Mills, M. D.; F. A. Anderson, M. D.; C. Bassman, M. D.; W. F. Hays, M. D.; R. C. Meloy, M. D.; W. S. Mason, M. D.; M. T. Means, M. D.; J. T. Jennings, M. D.; J. T. Semmons, M. D.; A. M. Arnold, M. D.

OSAGE INDIAN AGENCY,
Pawhuska, Okla., January 12, 1926.

HON. J. W. HARRELD,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Replying to your circular letter of January 7, inclosing Senate bill No. 1833, and requesting that I furnish you with approximate estimate of the number of Indians under this agency who suffer from rheumatism, blood disorders, eruption, or various skin diseases and stomach and intestinal troubles, who might be benefited by treatment as contemplated in said bill:

This office has no data concerning diseases of the Osage Indians, except tuberculosis and venereal diseases. No intelligent estimate can be made without investigation, which would require some time as to the number afflicted with rheumatism. Concerning the other ailments mentioned, namely, blood diseases, eruptions or various skin diseases, stomach and intestinal troubles, it is probable that 90 per cent of the Osage Indians living in Osage County have one or more of such ailments, and many of the Osages frequently visit Claremore for treatment and apparently many of them receive material benefit by the use of the mineral waters there.

Very truly yours,

J. GEO. WRIGHT, Superintendent.

WINNEBAGO INDIAN AGENCY,
Winnebago, Nebr., January 11, 1926.

HON. J. W. HARRELD,
United States Senate, Washington, D. C.

MY DEAR SENATOR: I have your letter of January 7, with inclosures of a bill and memorandum relating to the establishment of a sanatorium at Claremore, Okla., for Indians suffering from rheumatism, stomach troubles, etc.

Such figures as I give you are merely an estimate and should be treated as such strictly. It is practically impossible to furnish absolute data in a matter of this sort.

On the Winnebago and Omaha Reservations, of which I have charge, there are approximately 2,500 Indians. Of this number I believe that 5 per cent have rheumatism in some form. Stomach troubles are rather rare, and the percentage would be smaller, say $3\frac{1}{2}$ per cent. Blood disorders and skin diseases are very prevalent. I take this to include syphilitic cases as well as others. The physicians at this agency have claimed that the percentage of such cases reaches 60 or more. I think that I can safely say that fully 50 per cent of the Indians of the two reservations suffer more or less from this disease. In many cases the disease is dormant, and the victim perhaps does not know it until it shows up in an acute form brought out by an attack of some other disease.

It will be seen, therefore, that $58\frac{1}{2}$ per cent of these Indians are afflicted in some form or other with the diseases you have named.

If there is any further information I can give you in this or any other matter relating to the Indians I shall be very glad to do so.

Yours very truly,

F. F. MANN, Superintendent.

FIVE CIVILIZED TRIBES,
Muskogee, Okla., January 12, 1926.

HON. J. W. HARRELD,
United States Senate, Washington, D. C.

MY DEAR SENATOR: I am in receipt of your letter of January 7, 1926, inclosing a copy of Senate bill No. 1833, which proposes the erection of a sanatorium at Claremore, Okla., exclusively for Indians for the treatment of rheumatism, stomach trouble, blood disorders, and skin diseases.

You ask for an approximate estimate of the number of Indians in the Five Civilized Tribes who are suffering from these ailments. In reply I have

to advise that, while we have no statistics upon which we can base an accurate estimate, we have so many reports from the field indicating complaints of this nature and so many calls from Indians for payments to be used in going to Hot Springs, Claremore, and other similar places for treatment, that I am inclined to believe that not less than one-third of the restricted Indians are afflicted with some ailment so as to come under the above-mentioned classifications.

I am in hearty sympathy with this bill and believe that if a sanatorium as contemplated in said bill could be erected and equipped substantial and very creditable results could be obtained.

Respectfully,

C. J. HUNT, *Acting Superintendent.*

PINE RIDGE, S. DAK., *January 19, 1926.*

HON. J. W. HARRELD,
United States Senate.

MY DEAR SIR: This refers further to your letter of January 7, asking for information as to the number of cases of rheumatism, stomach troubles, blood disorders, and skin diseases, etc., on this reservation.

I have requested my head physician to estimate the prevalence of these diseases on the Pine Ridge. The following is his opinion in this connection: Rheumatism, 400 cases; stomach and intestinal disorders, 450 cases; skin and blood disorders, 375 cases.

The doctor feels that he has made a conservative estimate.

I trust that this information will be of benefit to you in connection with your bill.

Respectfully yours,

W. O. R., *Superintendent.*

GRAND RAPIDS INDIAN AGENCY,
Wisconsin Rapids, Wis., January 15, 1926.

HON. J. W. HARRELD,
United States Senator, Washington, D. C.

MY DEAR SIR: Your letter of January 7, copy of Senate bill No. 1833, and memorandum accompanying, giving the information of your proposal to have Congress appropriate for the establishment of a hospital and sanatorium at Claremore, Okla., is most interesting, and I am very glad to learn of this effort on behalf of the American Indians.

It is not possible to give you an accurate statement of the number of Indians of this jurisdiction who are suffering from the various disorders suggested; but it is conservatively estimated that there are at least 200, fairly equally divided as to sex, and it would be very gratifying to know that there was a place where they might go and be benefited, as would seem probable with the opening of a sanatorium at Claremore.

We have considerable difficulty in caring for these Indians when they are in need of hospitalization, very especially for tuberculosis and other diseases, and I have suggested to the Indian Office that there is real need for a general hospital somewhere in Wisconsin, one that could be of access to any tribe at any time. Many die each year who might be cured or very materially benefited by having such an institution established and maintained for Indians exclusively within the State.

We have approximately 1,300 Indians of the Wisconsin band of Winnebagoes and of the Arpin band of Potawatomis. They are very poor and we require considerable money each year to furnish them ordinary medical attention, yet we can not attend to more than half.

I shall be very glad to learn the results of your efforts for the hospital and sanatorium at Claremore.

Very respectfully,

J. W. SMITH, *Superintendent.*

KIOWA INDIAN AGENCY,
Anadarko, Okla., January 13, 1926.

HON. J. W. HARRELD, M. C.,
Washington, D. C.

DEAR MR. HARRELD: I take pleasure in acknowledging receipt of your communication of the 7th instant, inclosing me a copy of Senate bill No. 1833 relative to an appropriation of \$500,000 to be used in the erection of a sanatorium and hospital, and in the purchase of proper equipment, for the benefit of all duly enrolled Indians who are afflicted with skin, stomach, blood, and rheumatic diseases, or other diseases for which the water at Claremore is efficacious.

If you can get this measure through it will be a great thing for afflicted Indians. Since there is approximately one-third of the Indians of the United States living in Oklahoma, your proposed location is ideal.

The last census report, made June 30, 1925, showed a population of 5,022 Indians. In order to make the most reliable estimate as to the number of Indians who might be afflicted with one of the above-named troubles, for which the radium water at Claremore would be the proper treatment, I will say that I called Dr. H. W. Langheim, who is in charge of the Kiowa hospital, and who has been among these Indians for the past eight years, to give me an estimate of the number he thought might be afflicted with the above-named class of diseases. He estimated the number at 5 per cent, which would be approximately 250. There would be about an equal number of males and females. I concur with him in his estimate. I am confident that a greater number of Indians than 5 per cent, or 250, would be greatly benefited by taking treatment in the radium water each year.

On account of so many of the Indians throughout the United States being afflicted with blood disorders, skin diseases, stomach and intestinal troubles, rheumatism, and other afflictions for which the water at Claremore would be the proper treatment, I know of no measure which could be passed, not involving a greater expenditure, which would give more relief to the Indians of the United States than your proposed bill. I explained the measure to a number of the Indians of the reservation. They expressed themselves as being greatly pleased with the idea of getting such a place where they might have free treatment.

Dear Mr. Senator, permit me to say in conclusion that I sincerely hope that you will be able to secure the passage of this bill.

Thanking you for your letter and the copy of the bill, and with very best wishes, I am,

Very respectfully,

J. S. BUNTIN, Superintendent.

CHEYENNE RIVER AGENCY,
Cheyenne Agency, S. Dak., January 19, 1926.

HON. J. W. HARRELD,
United States Senate, Washington, D. C.

DEAR SENATOR HARRELD: I acknowledge receipt of your letter of January 7, with which you inclose copy of Senate bill No. 1833, providing for the construction and equipment of a sanatorium to be erected at Claremore, Okla. So far as I know, no survey of the Indians of this reservation has ever been made to determine the prevalence of rheumatism, blood disorders, eruptions, or various skin diseases, and stomach and intestinal troubles, but I have conferred with the physician in charge of our hospital. He has examined several hundreds of the Indians and states as his opinion that approximately 2 per cent of our Indians are suffering with rheumatism, about 1 per cent with blood disorders, about 50 per cent with skin diseases, and 25 per cent with stomach and intestinal troubles. It is believed that Indians examined by the resident physicians is representative of the total number of Indians enrolled at this agency, and it is therefore reasonable to assume that our entire population of about 3,000 is affected with the several diseases and troubles in the proportion given.

This being true, it seems to me that there is need of a sanatorium such as you propose to erect, provided, of course, that the Indians of other jurisdictions are afflicted in the same way and in the same proportion as ours.

Very truly yours,

R. C. CRAIGE, Superintendent.

CONSOLIDATED UTE AGENCY,
Ignacio, Colo., January 13, 1926.

HON. J. W. HARRELD,
*Chairman Committee on Indian Affairs,
United States Senate, Washington, D. C.*

MY DEAR MR. HARRELD: I wish to express my appreciation for your effort in placing before the Senate bill No. 1833.

If this bill is passed as outlined, it will indeed be a great help to the Indians of the United States. My past 18 years with the Indians of the Northwest has shown me that a large percentage of them are afflicted with rheumatism, stomach troubles, blood and skin diseases. Many of them who would be willing and anxious to attend some hospital or sanatorium can not on account of lack of funds. If a hospital could be established where the treatments were free, I am sure that in a very few years all the tribes would patronize this place. From the health standpoint it can not be regarded too highly. Also from the standpoint of combating old tribal superstitions which center around medicine men it would be a great advantage toward advancing the different tribes.

I believe that in this jurisdiction there would be 50 adult and minor Indians who would take advantage of such a hospital. I would estimate that at least 50 are afflicted in various degrees with diseases that would be benefited by this radium water.

The Indian Service has made great advancement during the past few years in health campaigns for various Indian tribes, and I believe that if your bill becomes a law that it will have a most beneficial effect upon the health of Indians in this country.

Permit me to thank you for bringing this to my attention and allowing me to become informed upon the very good merits of this bill.

Very respectfully,

E. E. MCKEAN, *Superintendent.*

YERINGTON, NEV., February 25, 1926.

Senator J. W. HARRELD,
Washington, D. C.

DEAR SIR: Your letter of recent date in regard to a national hospital for the treatment exclusively for the Indians at Claremore, Okla., has been referred to me for reply, as I am physician for the Walker River Reservation. I have about 1,000 Indians under my jurisdiction, and I should estimate there are about 500 or 600 of these Indians who would be benefited greatly by such treatment as is contemplated by bill 1833, providing we could persuade them to go that distance. We are very unfortunate in having a condition prevailing here among the Indians which has been going on for years, and this is the use of narcotics in the form of Yen She. So far the officers have been unable to control it. If these Indians who use this drug could be forced to take treatment in such a sanitarium or hospital as you describe it would certainly be of the greatest service to them, and at the same time they might be cured of other diseases of which they may have. I sincerely trust the bill will receive a favorable decision.

Respectfully,

JOHN T. REES, M. D.,
Agency Physician, Walker River Indian Agency.

TURTLE MOUNTAIN AGENCY,
Belcourt, N. Dak., January 16, 1926.

HON. J. W. HARRELD,
Chairman Senate Indian Committee, Washington, D. C.

DEAR SIR: Your favor of the 7th instant with reference to Senate bill No. 1833 is acknowledged. A letter to me from Dr. O. P. Goodwin, agency physician, is inclosed herewith. You will notice that, according to the case records kept by him since he took up his duties here last September, there are 118 patients suffering with the ailments which the proposed sanitarium should help, out of the total of 997 cases examined; and he states the same ratio will hold with the total enrollment of Indians.

Out of the 118 patients afflicted with the diseases listed to be benefited, there are 71 cases of skin diseases and only 14 cases of rheumatism. This seems to me, a mere layman, however, to be too small a percentage of these people suffering with rheumatism, as many of them have gnarled hands and arms due to this disease and have given up hopes of relief or cure.

Taking these figures, it appears that practically 12½ per cent of the enrolled Indians here suffer with the diseases listed, which would give a number of 505 individuals here who can be benefited by proper treatment. There are over 4,040 Indians enrolled at this agency.

I believe personally that medicinal waters and baths can be of a great help to the sufferers here of those diseases, and the waters of Claremore are excellently situated to care for the Indian population of this great country. I think it would be a splendid help, not only to the Indians but also the whites, if such a sanitarium could be built.

Thanking you for your query. I am

Yours truly,

H. J. McQUIGG, Superintendent.

BELCOURT, N. DAK., January 16, 1926.

MR. HENRY McQUIGG,

Superintendent Turtle Mountain Reservation.

Belcourt, N. Dak.

DEAR MR. McQUIGG: Replying to the letter from Mr. J. W. Harreld, chairman of the Committee of Indian Affairs, will say that out of a total of 997 dispensary cases that were examined here during the period from September 12, 1925, to January 12, 1926, there were the following number of cases coming under the head of those listed:

Disease	Sex	Number
Skin diseases.....	Male.....	36
	Female.....	35
Indigestion.....	Male.....	15
	Female.....	18
Rheumatism.....	Male.....	8
	Female.....	6

This is practically the rate per thousand, and if totaled up with the entire population will be just about as near as I can get it until I finish my health survey.

respectfully submitted.

ORREN P. GOODWIN, M. D.,
Agency Physician.

SHAWNEE INDIAN AGENCY,
Shawnee, Okla., January 14, 1926.

HON. JOHN W. HARRELD,

United States Senator, Washington, D. C.

MY DEAR SENATOR: I have your letter of January 7, inclosing Senate bill No. 1833, providing for the construction of an Indian sanatorium at Claremore, Okla.

From what I can learn of the waters at Claremore I believe it is a good place to locate a sanatorium of this kind, and I believe also there are enough Indians of Oklahoma and surrounding territory, and who need treatment of such a nature as can be provided for at the proposed sanatorium to keep the place well filled. It is rather difficult for me to state offhand the approximate number of Indians under this jurisdiction who might be benefited from attending such an institution as the one mentioned, but I would place the number at from somewhere between 50 and 100.

You no doubt understand we are maintaining a sanatorium here for the care of tubercular patients, and it was intended to gradually develop this institution, in making added improvements, so that we can care for other classes of patients. However, I do not care to be selfish about these matters

and if some other location can be found where a sanatorium can be established that can better care for the Indian population of Oklahoma, I certainly would not care to stand in the way, for it is very likely that we will have about all we can care for at this institution anyway. I have just written you another letter thanking you for your interest in us here, in the way of helping us to get an added appropriation for this coming year, and I am ready to assist you at any time in anything that will be for the betterment of the Indians of our State. A large percentage of the Indians of Oklahoma are suffering from some of the disorders mentioned in your letter, due to improperly prepared food and lack of sanitary precautions, and these can only be properly cared for in an institution such as you propose to establish.

Thanking you for your assistance and with best wishes, I am,

Very truly yours,

A. W. LEECH, *Superintendent.*

PAWNEE INDIAN AGENCY,
Pawnee, Okla., March 8, 1926.

HON. J. W. HARRELD,
United States Senate, Washington, D. C.

DEAR SIR: Receipt is acknowledged of your letter of January 7, 1926, relative to your bill now pending in Congress for the establishment of an Indian sanitarium at Claremore, Okla., and I have delayed answering same for the reason that I desired to make a careful inquiry as to the number of Pawnee and Kaw Indians which should have treatment at this sanitarium, and it is my opinion that among the two tribes there are at least 100 Indians that should have treatment of this kind, but unfortunately these are among the poorer class of Indians and have no funds available for that purpose. Of course you realize as well as I do that you would not be able to get them all to go even though they were in a condition financially to do so; however, there are at least that many that should receive treatment for blood and skin diseases.

It is my opinion, from quite a bit of experience with the Claremore waters, that it would do the Indians a world of good; and, of course, it being operated and maintained by the Government would make it possible for us to send Indians there who could not go anywhere else. I would also call your attention to the fact that there would be a great many Indians throughout the United States who should go to a sanitarium of this kind that would not have funds available to pay their transportation there and back as well as maintaining themselves while taking the treatment, but I presume this is a matter that your bill will take care of, as it is usually that class of Indians who need treatment worst and are more likely to spread their diseases among other Indians.

I hope my delaying this matter has not inconvenienced you any, and in closing will state that I have at the present time six Indians at Claremore from this reservation who are taking treatment and are getting splendid results. On a recent visit to Claremore I found that the people of the town, more especially the physicians, were lending every effort possible to make life pleasant to these Indians and see that their surroundings were such as would be beneficial to them. Ordinarily, a watering place is usually run on a loose type; however, I find that the citizenship of Claremore will not stand for anything of this kind.

Very respectfully yours,

H. M. TIDWELL, *Superintendent.*

CANTONMENT INDIAN AGENCY,
Canton, Okla., January 16, 1926.

Senator J. W. HARRELD,
Chairman Senate Committee on Indian Affairs, Washington, D. C.

MY DEAR SENATOR: Your letter of January 7, 1926, inclosing a copy of Senate bill 1833, providing for a sanatorium and hospital for use of Indians at Claremore, Okla., has been received.

Our records show that about 70 cases of rheumatism, stomach troubles, kidney and bladder disorders, and blood and skin diseases were treated by our agency physician during the past year. This would be 10 per cent of the entire population of this jurisdiction. There were undoubtedly a number of other cases not treated by our physician and not brought to our attention.

I have no hesitancy in saying that I believe the proposed sanatorium and hospital at Claremore would be a great thing for the Indians. While I was